

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7513

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B

CARLO BORDONI,

Plaintiff-Appellant,

-against-

WASHINGTON POST COMPANY, JACK
EGAN, and B. C. BRADLEE,

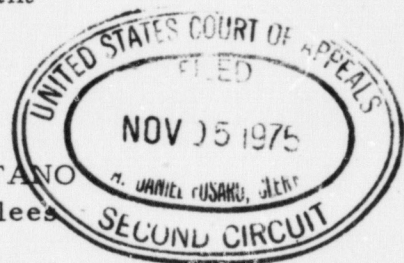
Defendants-Appellees.

ON APPEAL FROM AN ORDER AND JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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(5077A)

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Docket Entries

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:
Pltff-7/24/74

JUDGE WELLS
74 Civ. 3169

TITLE OF CASE

ATTORNEYS

For plaintiff:

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For defendant:

all defts:

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STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISR.
U.S. 5 mailed X	Clerk	7/24/74	McFalco	11	11
U.S. 6 mailed ✓	Marshal	7/24/74	McFalco	11	11
Basis of Action: Defamation & Libel	Docket fee	7/24/74	McFalco	11	11
action \$7,500,000.	Witness fees	7/24/74	McFalco	11	11
Action arose at:	Depositions	7/24/74	McFalco	11	11

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Docket Entries

JUDGE WEINFELD

74 NY 3189

DATE	PROCEEDINGS	Date Order of Judgment Not
Jul 24-74	Filed complaint and issued summons.	
Aug. 7/74	Filed summons & ent. marshal's ret. served on: (1) B.C. Bradlee by same on 7/26/74. (2) Jack Egan by Mr. B.C. Bradlee on 7/26/74 (3) Washington Post Co. on 7/25/74 unexecuted.	
Aug. 19-74	Filed stip & order that time which deft's may respond to complaint, is ext. to 9-6-74. Gagliardi, J.	
ep. 6/74	Filed ANSWER of defts Washington, Egan and Bradlee to the complaint.	VJF
ep. 11/74	Filed marshal's returns on service of complaint, served on: (1) Jack Egan by Joseph Egan 8/29/74 (2) Washington Post Co. by H.W. Siegel 8/29/74.	
ep. 20/74	Filed AMENDED ANSWER of defts. to the complaint.	VJF
st. 2/74	Filed pltf.'s notice to take deposition of B.C. Bradlee.	
st. 2/74	Filed pltf.'s notice to take deposition of Washington Post Co.	
st. 2/74	Filed pltf.'s notice to take deposition of Jack Egan.	
st. 7/74	Filed defts.' notice of motion re: judgment ret: 10/22/74.	
st. 7/74	Filed defts.' memo. of law in support of defts' motion for a judgment on the pleadings.	
st. 29/74	Filed reply brief for the defts.	
ov. 6-74	Filed Notice of Reassignment to Judge E. Weinfeld.	
Dec 3-74	Filed Answer of Defs. to Pltf's Complaint, dated Oct 29-74 (filed in 74-316)	
07-15-75	Filed pltf's memorandum of law in opposition to defts motion to dismiss pltf's complaint.	
7-15-75	Filed Answering affdvt. of pltf.	
7-15-75	Filed OPINION # 42799 Defendants moved to dismiss complaint consisting of four claims for reason stated. The three claims which allege the article is libelous in that it reflects upon business of pltf. The three claims are dismissed. The claim based on innuendo is also dismissed--Weinfeld, J. m/n	
8-07-75	FILED JUDGMENT--ORDERED that defts. have judgment against pltf. dismissing complaint for failure to state a claim. Clerk m/n	
08-14-75	Filed pltf. notice of appeal to the U.S.C.A. for Second Circuit from the order and Judgment entered on 8-7-75. Mail copy to William Connolly & Galligan	
8-22-75	Filed notice of original record record on appeal has been certified and transmitted to the US.C.A. for the Second Circuit on 9-22-75.	
8-23-75	Filed notice of supplemental record on appeal has been certified and transmitted to the USCA for Second Circuit on 9-23-75	

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COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CARLO BORDONI,

Plaintiff,

-against-

1974 Civil Action
No. 3169

WASHINGTON POST COMPANY, JACK
EGAN, and B.C. BRADLEE,

Defendants.

COMPLAINT

Plaintiff Demands
Trial by Jury

-----x

NATURE OF THE ACTION

1. This action is for libel and defamation of the Plaintiff by the Defendants.

PARTIES AND THEIR SITUS

2. Plaintiff, CARLO BORDONI ("BORDONI"), is a citizen and resident of the Country of Italy and resides at 29 Via Mose Bianchi, Milan, Italy.

3. Upon information and belief, Defendant, WASHINGTON POST COMPANY ("WASHINGTON"), is a corporation organized and existing under the laws of the District of Columbia and maintains an office at 430 Madison Avenue, New York, New York, and is doing business within this judicial district.

4. Upon information and belief, Defendant JACK EGAN ("EGAN") is an employee of Defendant, WASHINGTON and has his offices at 1150 15th Street N.W., WASHINGTON, D.C. and is doing business within this judicial district.

5. Upon information and belief, Defendant, B.C. BRADLEY ("BRADLEE") is an employee of Defendant, WASHINGTON

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COMPLAINT

and has his offices at 1150 15th Street N.W., WASHINGTON, D.C. and is doing business within this judicial district.

6. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.

BACKGROUND OF THE PARTIES

7. For many years BORDONI has been in the business of domestic banking, international banking, economics and monetary matters and is an acknowledged expert in these areas.

8. In his acknowledged position as an international monetary, banking and financial expert, BORDONI has edited a monthly financial review and has authored a number of articles concerning monetary and economic matters [which have been published in various monthly reviews and newspapers].

9. BORDONI has been an officer and/or director of a number of international banking and financial institutions including Credito Italiano, Monte dei Paschi di Siena; Swiss Israel Trade Bank, London and Geneva, First National City Bank, Milan; Moneyrex, Milan; Banca Unione, Milan; and Amincor Bank, Zurich. BORDONI was also the Managing Director of SOCIETA GENERALE IMMOBILIARE ("SOCIETA"), a real estate and financial institution with its principal office in Rome, Italy.

10. As Managing Director of SOCIETA, BORDONI was a member of its Executive Committee and the Managing Director and Chief Operating Officer of all its Italian and foreign subsidiaries with the primary responsibility of engaging in commercial and investment banking on their behalf.

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COMPLAINT

11. As a director and/or officer of the aforesaid banks and financial institutions, BORDONI has dealt with some of the largest banks in the world in the areas of international banking and monetary transactions and among other things was responsible for the founding and growth of the Milan branch of First National City Bank and the growth of Banca Unione.

12. On or about August, 1972, BORDONI was elected as an outside member of the Board of Directors of FRANKLIN NEW YORK CORP. ("FRANKLIN"), a holding company, whose principal subsidiary is FRANKLIN NATIONAL BANK, (the "Bank"). In addition, since 1972, BORDONI has been a member of FRANKLIN's International Executive Committee, which is composed of certain members of the Board of Directors of FRANKLIN and the BANK.

13. BORDONI, as an outside member of the Board of Directors of FRANKLIN, was never involved, directly or indirectly, in: (a) the daily internal financial affairs or daily financial transactions of FRANKLIN or the BANK; (b) the internal management of FRANKLIN or the BANK; or (c) the performance of any duties on behalf of FRANKLIN or the BANK except those duties of an outside director of FRANKLIN.

14. Due to his reputation, financial and banking acquaintances and contacts in the European financial community, BORDONI assisted in the placement of approximately 750,000,000 Eurodollar funds into the London, England and Nassau, Bahamas branches of the BANK.

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COMPLAINT

15. From time to time during the relevant periods herein set forth, the BANK engaged in foreign currency exchange transactions. At no time prior to his election as an outside director of FRANKLIN, during his directorship or subsequent to his resignation as a director of FRANKLIN, was BORDONI responsible for any foreign currency transaction to which the BANK was a party.

16. As an outside director of FRANKLIN not involved in the internal management of FRANKLIN or the BANK, BORDONI, at or prior to meetings of the Board of Directors of the International Executive Committee of FRANKLIN, was furnished information concerning the financial condition of the BANK and FRANKLIN. BORDONI as an outside director, did not, directly or indirectly, participate in the preparation of any financial information or reports including, but not limited to balance sheets and statements of profit and loss, as required by government regulatory agencies concerning FRANKLIN or the BANK.

17. On June 21, 1974 BORDONI voluntarily submitted his resignation as a member of the Board of Directors of FRANKLIN.

18. Upon information and belief, Defendant, WASHINGTON is the publisher of a national newspaper, THE WASHINGTON POST ("POST"), which is widely circulated throughout this judicial district and throughout the United States and the world.

19. Upon information and belief, Defendant, B.C. BRADLEE is employed by Defendant WASHINGTON as Editor and is responsible for all articles appearing in the Journal.

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COMPLAINT

20. Upon information and belief, Defendant, EGAN is a reporter employed by Defendant WASHINGTON.

FOR A FIRST CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

21. On or about the 22nd day of June, 1974, the Defendants wilfully and maliciously printed, published and circulated throughout this judicial district, the United States and the world a certain false, defamatory, malicious and libelous newspaper article in the POST concerning BORDONI, which newspaper article is set forth herein as Exhibit A and which is incorporated by reference as if the entire newspaper article were set forth herein at length.

22. The Defendants knew at the time of the printing, publication and circulation of the said article that the statements therein concerning BORDONI were false, defamatory, malicious and libelous.

23. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

24. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment, and humiliation and impeachment of his character, honor,

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COMPLAINT

credibility, integrity and professional competence and by reason of the aforesaid wilful act on the part of the Defendants knowing that the article and the statements therein concerning BORDONI were false, defamatory, malicious and libelous, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

FOR A SECOND CLAIM FOR RELIEF
AGAINST ALL THE DEFENDANTS

25. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 21, inclusive of this Complaint with the same force and effect as if the said paragraphs were set forth herein in full.

26. The article so published concerning BORDONI is false and defamatory, and the Defendants printed, published and circulated the said article in reckless disregard of the truth.

27. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

28. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment and humiliation and impeachment of his character, honor, credibility, integrity

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COMPLAINT

and professional competence and by reason of the aforesaid wilful act on the part of the Defendants in printing, publishing and circulating the said article and the false, defamatory, malicious and libelous statements therein concerning BORDONI in reckless disregard of the truth, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

FOR A THIRD CLAIM FOR RELIEF
AGAINST ALL THE DEFENDANTS

29. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 21, inclusive of this Complaint with the same force and effect as if the said paragraphs were set forth herein in full.

30. The said article so printed, published and circulated concerning BORDONI is false and defamatory.

31. At the time of such printing, publication and circulation of the said article, Defendants knew or could have ascertained with the exercise of reasonable care, that the said article as it pertained to BORDONI was untrue, but instead Defendants acted recklessly and/or negligently in publishing such article without investigating the truthfulness of the statements concerning BORDONI.

32. It is well-known in the financial community that FRANKLIN is a publicly owned company whose stock was traded on the New York Stock Exchange and is required to file periodic reports with the said Exchange and various Federal regulatory agencies.

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COMPLAINT

33. By the said article, the Defendants meant, intended to mean and were understood to mean, by persons reading the said article, that BORDONI had participated in criminal acts in violation of certain Federal banking statutes and other Federal statutes, rules and regulations, including but not limited to disclosure requirements to which public and banking corporations such as FRANKLIN and the BANK are subject.

34. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility and integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

35. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment, humiliation and impeachment of his character, honor, credibility, integrity and professional competence and by reason of the aforesaid wilful act on the part of the Defendants knowing that the article and the statements therein concerning BORDONI were false, defamatory, malicious and libelous and/or in acting in reckless disregard of the truth or negligently, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

FOR A FOURTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

36. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 21, inclusive of this Complaint with the same force and effect as if the said paragraphs were set forth herein in full.

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COMPLAINT

37. The said article so printed, published and circulated concerning BORDONI is false and defamatory.

38. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

39. By reason of the foregoing libel on the character, honor, credibility, integrity and professional competence of BORDONI, he has been caused to suffer great mental anguish and suffering, personal humiliation, public contempt, scorn, impairment of reputation and standing in the community, disgrace and impairment of reputation among his friends, business associates and international bankers, and he has had his competence, integrity and reputation as an international banker and financial and monetary expert questioned all to his damage in the sum of \$5,000,000.

FOR A FIFTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

40. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 20, inclusive of this Complaint with the same force and effect as if the said paragraphs were set forth in full.

41. On or about the 26th day of June, 1974, the Defendants wilfully and maliciously printed, published and circulated throughout this judicial district, the United States and the world a certain false, defamatory, malicious and libelous newspaper article in the POST concerning BORDONI,

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COMPLAINT

which newspaper article is set forth herein as Exhibit B and which is incorporated by reference as if the entire newspaper article were set forth herein at length.

42. The Defendants knew at the time of the printing, publication and circulation of the said article that the statements therein concerning BORDONI were false, defamatory, malicious and libelous.

43. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

44. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment and humiliation and impeachment of his character, honor, credibility, integrity and professional competence and by reason of the aforesaid wilful act on the part of the Defendants knowing that the article and the statements therein concerning BORDONI were false, defamatory, malicious and libelous, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

FOR A SIXTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

45. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 20, inclusive,

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COMPLAINT

and Paragraph 41 of this Complaint with the same force and effect as if the said paragraphs were set forth herein in full.

46. The article so published concerning BORDONI is false and defamatory, and the Defendants printed, published and circulated the said article in reckless disregard of the truth.

47. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation and the said article has impeached the character, honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

48. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment and humiliation and impeachment of his character, honor, credibility, integrity and professional competence and by reason of the aforesaid wilful act on the part of the Defendant in printing, publishing and circulating the said article and the false, defamatory, malicious and libelous statements therein concerning BORDONI in reckless disregard of the truth, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

FOR A SEVENTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

49. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 20 and Paragraph

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COMPLAINT

41, inclusive, of this Complaint with the same force and effect as if the said paragraphs were set forth herein in full.

50. The said article so printed, published and circulated concerning BORDONI is false and defamatory.

51. At the time of such printing, publication and circulation of the said article, Defendants knew or could have ascertained with the exercise of reasonable care, that the said article as it pertained to BORDONI was untrue, but instead Defendants acted recklessly and/or negligently in publishing such article without investigating the truthfulness of the statements concerning BORDONI.

52. It is well-known in the financial community that FRANKLIN is a publicly owned company whose stock was traded on the New York Stock Exchange and is required to file periodic reports with the said Exchange and various Federal regulatory agencies.

53. By the said article, the Defendants meant, intended to mean and were understood to mean, by persons reading the said article that BORDONI had participated in criminal acts in violation of certain Federal banking statutes and other Federal statutes, rules and regulations, including but not limited to disclosure requirements to which public and banking corporations such as FRANKLIN and the BANK are subject.

54. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character,

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COMPLAINT

honor, credibility, integrity and professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

55. The Defendants' printing, publication and circulation of the aforesaid article did proximately cause damage to BORDONI by reason of his subsequent embarrassment and humiliation and impeachment of his character, honor, credibility, integrity and professional competence and by reason of the aforesaid wilful act on the part of the Defendants knowing that the article and the statements therein concerning BORDONI were false, defamatory, malicious and libelous and/or in acting in reckless disregard of the truth or negligently, BORDONI is entitled to recover exemplary damages from the Defendants in the sum of \$2,500,000.

FOR AN EIGHTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

56. BORDONI repeats and realleges each and every allegation set forth in Paragraphs 1 through 20 inclusive, and Paragraph 41 of this Complaint with the same force and effect as if the said paragraphs were set forth herein in full.

57. The said article so printed, published and circulated concerning BORDONI is false and defamatory.

58. The printing, publication and circulation of such article by Defendants has exposed BORDONI to public contempt and scorn, thereby causing him financial injury, embarrassment and humiliation, and the said article has impeached the character, honor, credibility, integrity and

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COMPLAINT

professional competence of BORDONI; and for all of said reasons the said article is libelous per se.

59. By reason of the foregoing libel on the character, honor, credibility, integrity and professional competence of BORDONI, he has been caused to suffer great mental anguish, humiliation, public contempt, scorn, disgrace among his friends, business associates and international bankers, and he has had his competence, integrity, and reputation as an international banker and financial and monetary expert questioned all to his damage in the sum of \$5,000,000.

WHEREFORE, BORDONI demands judgment against all the Defendants as follows:

- (a) \$2,500,000 as punitive damages pursuant to the Claims for Relief hereinabove set forth;
- (b) \$5,000,000 for compensatory damages pursuant to the Claims for Relief hereinabove set forth;
- (c) the cost and disbursements of Plaintiff in connection with this action; and
- (d) such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 24, 1974.

DIFALCO, FIELD & O'ROURKE

By David A. Field
A Member of the Firm
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Tel. (212) 986-2434

The Washington Post

BUSINESS

& FINANCE

SATURDAY, JUNE 22, 1974

Merger Plan For Franklin Far Advanced

By Jack Egan
Washington Post Staff Writer

Efforts to merge financially troubled Franklin National Bank with either another New York bank or with a major English financial institution are far advanced, an authoritative source close to the situation said yesterday.

The major matter that needs to be cleared up is whether the Federal Deposit Insurance Corporation could assume substantial risk for all potential losses that have not yet been uncovered. This is what happened last year when the \$1 billion asset U.S. National Bank went bankrupt and was quickly merged into Rocker National Bank of California.

On Thursday, Franklin National, 20th largest in the country, reported it lost \$63 million in the first five months of the year, with \$5.8 million attributed to foreign exchange speculation, most of it unauthorized, according to the bank. The contemplated transaction would probably take the form of a straight acquisition, and it might involve several banks purchasing parts of \$5 billion asset Franklin National, the source said.

In order to restore confidence in the bank, any arrangement would entirely remove mysterious Italian financier Michele Sindona — now Franklin's major shareholder — from the scene, according to the source.

Interested merger candidates include England's National Westminster Bank, Barclay's Bank and Midland Bank, as well as medium size New York banks. Merger with one of New York's banking giants, the source said, would almost certainly draw opposition from the Justice Department.

It was also learned yesterday that Carlo Bordon, a director of Franklin New York Corp., holding company for the bank, resigned at the board's request on Thursday although this has not been publicly announced.

Bordon, a Sindona intimate and involved in multiple business enterprises in Sindona's far-flung financial web, was formerly a foreign exchange trader with an international reputation for the scale of his speculation.

Bordon has been credited with organizing Franklin's foreign exchange department when Sindona purchased 22 per cent of the

bank's stock in 1972 and introducing his own style of high volume foreign exchange speculation.

Bordon's exit follows the firing of a foreign exchange trader who the bank charged with falsifying records and hiding transactions. In addition, the head foreign exchange trader for Franklin and the executive vice-chairman in charge of this area resigned.

On Thursday, Joseph W. Barr, former Treasury Secretary, took over the helm of the troubled bank when chairman and chief executive officer Harold V. Gleason resigned his position in the wake of a financial statement detailing the bank's losses.

In Franklin's revised financial statement on Thursday—scrutinized and approved by the Securities and Exchange Commission—the bank denied that it "was presently a participant in any negotiations involving a merger, sale of assets or other disposition of any interest in the bank."

However, the source, who has followed the unfolding of Franklin's financial problems and participated in trying to find solutions, said merger discussions have been going on for several weeks and the SEC was aware of this.

He said no deal is about to be consummated, but that an assumption of risk by the FDIC, which insures individual deposits in banks, would go a long way to eliminating any qualms other banks might have.

The Comptroller of the Currency, which regulates the bank, tentatively approved a plan in mid-May for a \$50 million stock offering by the bank to shore up its capital position with Sindona's personal holding company, Fasco International, offering to buy all shares not subscribed to by the public. This potentially would give Sindona as much as 85 per cent of the shares of the bank.

However, the Federal Reserve Board, which has poured about \$1 billion in funds into Franklin to permit it to keep meeting its obligations in spite of deposit outflows and is thus Franklin's major creditor, is known to be reluctant to approve a situation where Sindona through Fasco would be the holding company in control of the bank.

The Fed by virtue of its authority to approve bank holding companies is expected to prevail.

Deals Aimed At Profits For Franklin

Washington Post
By Jack Fain
June 23, 1974

NEW YORK, June 23—

Italian financier Michele Sindona, Franklin National Bank's largest shareholder, may have directed foreign exchange transactions to Franklin in 1973 and early 1974 from other foreign banks he controls in order to guarantee a profit for Franklin, Federal investigators said today.

The latest twist comes on top of revelations last week that Franklin lost \$45.8 million in foreign exchange trading in the first five months of 1974. The bank said this was due almost exclusively to unauthorized trading and falsified transactions.

The profitable foreign exchange business directed to Franklin and the losses in the same area seem to be independent events, according to one source investigating the situation.

The source said that the foreign exchange trades set up for Franklin with other Sindona business interests earned the bank an automatic profit because the transactions took place at a favorable rate independent of the actual foreign exchange market rate.

He added that there might be nothing illegal in any of this as far as Franklin was concerned, but said he did not know if the parties involved on the other side of the foreign exchange trades with Franklin lost money or offset potential losses with other currency transactions.

Foreign exchange transac-

tions are basically speculations on the future movements of currencies. A trader will buy for future delivery of a currency at a set price in the hopes that it will go up. He will sell a currency with a future delivery in the expectation it will do down. In either case, he makes a profit. If a currency moves contrary to expectations, it produces a loss.

One top bank regulatory official today said foreign currency speculation was "like shooting craps."

According to Franklin's 1973 annual report, the bank last year earned \$7.75 million in foreign exchange, approximately 60 per cent of the bank's profits for the year. This was up sharply from the \$321,000 earned in 1972 when Sindona bought a 21.6 per cent share in Franklin through his Liechtenstein-based holding company, Fasco International.

A report filed earlier this year with the Securities and Exchange Commission said

that Sindona, in addition to Franklin, had substantial or controlling interest in five foreign banks: Banca Finanziaria, Milan; Banca Unione, S.P.A., Milan (the two have since merged); Banca Di Messina; Banque De Financement, S. A., Geneva; and Bankhaus Wolff A. G., Hamburg.

The SEC and the Comptroller of the Currency are investigating how much of Franklin's profits last year are the result of business deliberately shunted Franklin's way by Sindona's other banks and business interests.

A source in the Comptroller of the Currency's office said it had looked at more recent trades between Franklin and other Sindona banks, and there was "no evidence of Sindona or banks taking any profit out of Franklin." To the contrary, he said, Franklin made money on these trades.

The source confirmed that the Comptroller was looking into the involvement of Carlo Bordini in Franklin's foreign exchange operations but said this was not related to misvaluations of transactions related to recent losses.

Bordini, a former fore-

exchange trader who is involved in many of Sindona's business enterprises, including the Milanese banks, was put on the board of Franklin New York Corp., holding company for the bank, in 1972. He resigned from the board last Thursday with no reason given.

Bordini today denied he resigned at the request of the Franklin board and said he was not involved in the foreign currency transactions which led to the Franklin losses. Dow Jones News Service reported.

Bordini is credited with organizing Franklin's for-

foreign exchange operations in 1972 and introducing the high-volume speculative style he has been noted for and which some observers feel got the bank into trouble.

An investigation by the Comptroller into whether possible fraud was involved in the recent foreign exchange losses is continuing according to a source, and includes everyone "from the newest employee to the top of the bank." The investigation into the whole foreign currency matter by the Comptroller is expected to wind up next week.

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 CARLO BORDONI, : 74 Civ. 31 9
Plaintiff, :

5 v. :

6 THE NEW YORK TIMES COMPANY, INC., :
A.M. ROSENTHAL and JOHN H. ALLEN, :
Defendants. :

7 - - - - - x

8 CARLO BORDONI, :
Plaintiff, : 74 Civ. 3169

9 v. :

10 WASHINGTON POST COMPANY, JACK EGAN :
and B.C. BRADLEE, :
Defendants. :

11 - - - - - x

12 CARLO BORDONI, :
Plaintiff, : 74 Civ. 3170

13 v. :

14 TWIN COAST NEWSPAPERS, INC., and :
HAROLD GOLD, :
Defendants. :

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16 October 29, 1974,
2 P.M.

17 Before:

18 Hon. Edward Weinfeld,
District Judge.

19 Appearances:

20 DIFALCO, FIELD & O'ROURKE, ESQS.,
Attorneys for Plaintiff,
21 By: David A. Field, Esq., of Counsel.

22 CAHILL, GORDON & REINDEL, ESQS.,
Attorneys for Defendant New York Times,
23 By: Floyd Abrams, Esq., of Counsel.

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Appearances.

WILLIAMS, CONNOLLY & CALIFANO, ESQS.,

Attorneys for Defendant Washington Post Company,

By: Joseph A. Califano, Jr., and

Charles S. Robb, Esq., of Counsel.

AMEND & AMEND, ESQS.,

Attorneys for Defendant Twin Coast Newspapers,

By: Richard L. Schneidler, Esq., of Counsel.

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2 THE COURT: Mr. Abrams, before you go ahead,
3 wouldn't it be more desirable for me to hear those defendants
4 who are moving to dismiss on jurisdictional grounds? I don't
5 think you have raised the jurisdictional --

6 MR. ABRAMS: I have not raised it, your Honor.

7 THE COURT: Well, two defendants have raised it
8 and I think I would like to hear that issue first because
9 if the complaint doesn't meet jurisdictional requirements,
10 I see no point if the plaintiff will be required to amend
11 in your arguing at this time.

12 Now, the court has the responsibility entirely
13 independent of counsel's position to make sure there is
14 proper jurisdiction and a proper jurisdictional allegation.

15 As I read these papers, there appears to be
16 substance to it and I am not going to hear an argument on
17 the merits of the case when the complaint is deficient
18 so far as jurisdiction is concerned.

19 MR. FIELD: If it please the Court, may I be
20 heard, your Honor?

21 THE COURT: Whom do you represent?

22 MR. FIELD: I am David A. Field, of DiFalco,
23 Field & O'Rourke, counsel for Carlo Bordoni in each of these
24 actions.

25 I assume from what you said there is a possibility

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2 you might dismiss the complaint for failure to plead
3 sufficient jurisdiction.

4 THE COURT: There is more than a possibility,
5 there is a probability. As I have read the complaint, al-
6 though it seems to me simple enough to make proper juris-
7 dictional allegations, there is a shortcoming, and the
8 Supreme Court has been very precise on the function of
9 the court to make sure there are proper jurisdictional
10 allegations.

11 Why there is any problem about it, I don't know.

12 MR. FIELD: My only comment on that, your Honor,
13 is that I presume, although I don't wish to be too pre-
14 sumptuous, that your Honor will give us the right to amend,
15 asserting proper jurisdictional grounds. If that be so,
16 the complaint would be essentially the same complaint we now
17 have before the Court.

18 THE COURT: It may be, but I have a responsibility
19 here and it has been thrust upon me by what I call a some-
20 what inartistic pleading if the jurisdictional factual
21 underpinning does exist. If it does exist, I don't know
22 what the problem was in not drafting the complaint properly.

23 MR. FIELD: Of course, if your Honor feels power-
24 less to review the rest --

25 THE COURT: I am not going to review any motion on

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2 the merits where obviously if there is lack of jurisdiction
3 the complaint has to be amended. It isn't proper procedure
4 and I won't indulge in it.

5 Since the defendant did raise the jurisdictional
6 question, that is it.

7 MR. FIELD: Would your Honor, if other counsel
8 agreed to a stipulation to an amendment of the complaint to
9 allege jurisdictional grounds, hear the balance of the motion?

10 THE COURT: Yes, if they agree upon it, if they
11 will allow you to amend your complaint right in this
12 argument so the jurisdiction is established and they make
13 no motion directed to jurisdiction.

14 MR. FIELD: May we have five minutes, your Honor?

15 THE COURT: Yes, and the court will take a recess
16 in the meantime.

17 (Recess)

18 MR. FIELD: Your Honor, we met outside the courtroom
19 and the defendants in each of the three cases have agreed
20 with us that we may amend now the allegations as to juris-
21 diction. If you like, your Honor, I will read the amendments
22 with reference to The New York Times case.

23 Paragraph 3 is amended to read as follows: "Upon
24 information and belief, the defendant New York Times
25 Company (Times) is a corporation organized and existing

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under the laws of the State of New York and maintains its principal place of business at 229 West 43rd Street, New York, New York, and is doing business within this judicial district."

Paragraph 4: "Upon information and belief, defendant A.M. Rosenthal (Rosenthal) is a citizen and resident of the State of New York, is an employee of the defendant Times and has its offices at 229 West 43rd Street, New York, New York, and may be found within this judicial district."

paragraph 5 is amended to read: "Upon information and belief, defendant John H. Allen (Allen) is a citizen and resident of the State of New York, is an employee of the defendant Times, and has its offices at 229 West 43rd Street, New York, New York, and may be found within this judicial district."

If your Honor please, with respect to the other two complaints, I will read at the time we argue the motions, or whatever your Honor prefers.

THE COURT: I should say this. You gentlemen wrote a letter to the court suggesting that under our local rules it be assigned to one judge. As you know, I agreed to take the assignment because the case assigned to me was the first one. I wasn't aware of the fact that there were different

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2 publications here and it seems to me that they may raise
3 different issues, but as long as I have agreed to take them,
4 I will allow them to remain. I take it that the basis of
5 your jurisdiction then is diversity?

6 MR. FIELD: Yes, your Honor.

7 THE COURT: This means that in the case against
8 The New York Times, the law of the State of New York would
9 apply?

10 MR. FIELD: That is correct, your Honor.

11 THE COURT: Who are the other defendants? In
12 the case against the Washington Post, what law applies there?

13 MR. FIELD: The Washington Post Company, which is
14 the publisher, I understand has its principal place of
15 business in New York City, although it is a Delaware
16 corporation.

17 THE COURT: Where was the publication?

18 MR. FIELD: I think the publication was in this
19 judicial district as well as Washington, D.C.

20 THE COURT: Who are the other separate defendants?

21 MR. FIELD: The Journal of Commerce, your Honor,
22 which we believe is a New York corporation. The publication
23 was made here in New York and we are not concerned with
24 the case against the Wall Street Journal because they have
25 not made any motion at this time.

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2 THE COURT: All right.

b2 3 MR. ABRAMS: Your Honor, the Court has been served
4 with a barrage of briefs in all three cases and I think
5 I can keep my argument to a minimum, in light of the
6 briefing of both parties in The New York Times case. I
7 think it might be useful to outline at the beginning that
8 this case which arises out of a publication in the Times
9 on June 24, 1974, of an article which I am holding in my
10 hand with respect to --

11 THE COURT: I couldn't read it -- I wish lawyers
12 would serve legible copies, although you had the text of
13 it in your brief. You should look at your papers before
14 you submit them so you can submit clean copies.

15 MR. ABRAMS: I will. I am sorry.

16 The article is attached to the complaint and
17 it is quote in our memorandum of law and the charge against
18 the Times sounds in libel per se, but the parties are
19 agreed that the complaint does not allege or purport to
20 allege special damages and that, therefore, if it does not
21 properly sound in libel per se, that it should be dismissed.

22 The parties are also agreed, I think it is fair
23 to say, that the approach that should be taken by the Court
24 in reading the article is to read it as a whole, and the
25 New York cases so state.

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I also think it is agreed, although somewhat less clearly, that the heart of plaintiff's contentions with respect to the Times relate to the innuendos which he draws from the article and which in one case is asserted in the complaint and in all other cases is asserted in the memorandum of law of the plaintiff. The one allegation as to which there is an innuendo pleaded in the complaint is in paragraph 33 of the complaint, which states that the Times article alleges that Bordoni had participated in criminal acts in violation of certain federal banking statutes --

THE COURT: Pardon me. What paragraph?

MR. ABRAMS: Paragraph 33, your Honor.

THE COURT: Go ahead.

MR. ABRAMS: In paragraph 33 the allegation is made that by the article the defendants meant, intended to mean by persons reading the said article that Bordoni had participated in criminal acts in violation of certain federal banking statutes and other federal statutes, rules and regulations, including but not limited to disclosure requirements to its public and banking corporation to which Franklin and the bank are subject.

That is the only allegation in the complaint of an innuendo which plaintiffs pleaded in their complaint.

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2 I will turn to that one first.

3 It seems to us, by a simple reading of paragraph
4 33 of the complaint against the article in question, that
5 one can conclude, and your Honor should conclude, that
6 the Times article makes no reference and draws no inference
7 with respect to federal law, to disclosure requirements,
8 banking laws of any sort, that there is simply no way that
9 the Times article can be said to permit the innuendo which
10 is stated in paragraph 33. We have cited much case law in
11 our brief to the effect that innuendos may not expand upon,
12 may not enlarge upon that which is in fact in an article
13 said to be libelous per se.

14 We maintain that that is precisely what is
15 occurring here and on the basis of many cases we cited,
16 most of which involve far less egregious attempts at
17 expansion than here, that it should not be permitted.

18 This was the only paragraph of the complaint which
19 pleads an innuendo. With respect to the rest, plaintiff's
20 brief attempts to set forth what it is that the Times
21 article is said to infer.

22 THE COURT: Don't I decide this on the basis of
23 innuendo alleged in the complaint?

24 MR. ABRAMS: Yes, your Honor, it seems to us
25 you must decide it on the basis of the complaint alone and

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2 the case law is clear that with respect to paragraph 33
3 you are entitled to, and indeed you must, compare para-
4 graph 33 with the article.

5 With respect to all the other innuendos, the
6 law is clear, and we cite cases for the proposition, that
7 the plaintiff's brief cannot try to state an innuendo not
8 stated in the complaint.

9 There are no other innuendos stated in the com-
10 plaint and that being so, one is put back on the words of
11 the articles themselves, what the Appellate Division for
12 the Third Department not so long ago called the naked words
13 of the article itself. Those naked words are all before
14 the Court. I won't go into them in any length, because
15 they are amply briefed. The crux of what the Times says
16 about the resignation of the plaintiff here is that, and
17 I am reading from the article, "Whether the Bordoni resig-
18 nation was merely a part of the foreign exchange house
19 cleaning or part of the downgrading of Mr. Sindona's in-
20 fluence at Franklin could not be determined." That is not
21 anything which states a count in libel per se, and I won't
22 even proceed to the innuendos which plaintiff has alleged
23 it is suggestive of. There is no basis and I don't know
24 that plaintiff maintains that apart from the innuendos he
25 would try to attach to this, that that does state a course

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2 of action in libel per se.

3 The same I think may be said for the rest of
4 the allegations in the plaintiff's complaint as put against
5 the article itself.

6 The plaintiff does contend the matters are to
7 be decided by juries and not by judges. Yet, as the Tracy
8 case cited in our reply brief demonstrated, a case involving
9 Newsday, and other cases cited by us, and I quote, "In
10 brief, the question which an innuendo raises, is, in all
11 cases, a question not of fact, but, and innuendos," the
12 court said there, may not enlarge upon the meaning of words
13 so as to convey a meaning that is not expressed."

14 We have a lot of examples in this case --

15 THE COURT: Well, you say it is a question of
16 logic, but the cases say it is a question of law to be
17 determined by the court.

18 MR. ABRAMS: Yes, your Honor, and we have cited
19 cases to that effect.

20 The classic cases which are libel per se are
21 contained directly in plaintiff's own briefs. They are
22 cases such as the Moore case, in which someone is said to be
23 mentally deranged, a case in which a businessman is accused
24 of "extravagance" in his business dealings; the Ed Sullivan
25 case, an old 1931 case in the New York State courts, in

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2 which it was said of Ed Sullivan, "He should hop back into
3 Primo Carnera's left shoe, Eduardo, until I read you again,"
4 in effect accusing Ed Sullivan of being a press agent for
5 Primo Carnera.

6 There are cases where plaintiff is accused of
7 "reckless speculation," a bank accused of "inaccurate
8 accounting," and of an individual said to have been a former
9 Daily Worker editorial writer, employee, and a campaign
10 manager for a Communist Party candidate.

11 THE COURT: Was this Gerson, if I remember?

12 MR. ABRAMS: Yes, your Honor.

13 THE COURT: That goes back a long time.

14 MR. ABRAMS: It is our contention before your
15 Honor that the Times article is not defamatory, it simply
16 doesn't state anything which can be the basis of a libel suit.
17 Beyond that, we maintain the innuendos stated in the memo-
18 randum of law may not be considered but your Honor must
19 consider the article itself taken as a whole as against the
20 body of libel law we have cited to you.

21 Finally, we have relied upon the so-called single
22 instance rule and we have argued that at the very most
23 what the Times article can by any inference be said to have
24 inferred is that Mr. Bordoni was the director of the
25 parent company of the Franklin National Bank and gave

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2 incorrect advice with respect to investing in foreign
3 exchange transactions. In our main brief we cited one
4 case, the Arnold-Bernard case, an article that indicated
5 that the plaintiff had advised the public to invest in a
6 particular stock which had gone bad, and that case says
7 this, the article referred to at most one arguably in-
8 correct decision and even if the Court should hold that the
9 complaint states a cause of action in libel per se, which
10 we maintain it does not, plaintiff still would have been
11 obliged to plead special damages. He has not, your Honor,
12 and on that ground as well we urge the Court to dismiss
13 the complaint.

14 MR. FIELD: If it please the Court, we believe
15 that in determining whether an article is libelous per se
16 as to any particular individual, the Court must look to
17 who this individual is. If Mr. Bordoni were a prize fighter,
18 the article would not be libelous to him, but we have
19 alleged and for the purposes of this motion the defendants
20 have admitted that Mr. Bordoni is an international banker
21 of solid reputation. He has been involved in the field for
22 many years. We have also stated, and for purposes of this
23 motion it is admitted by the defendants, that Mr. Bordoni
24 had nothing at all to do with the responsibility for the
25 foreign currency exchange transactions of the Franklin

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2 National Bank.

3 With that in mind, your Honor, we must look
4 at the article to see whether or not it does defame Mr.
5 Bordoni in his business reputation or competence, in addition
6 to the fact as to examining it as to whether or not it does
7 by innuendo indicate that he may be guilty of violating
8 some federal statute or some regulation of a federal agency.

9 THE COURT: Is there any particular portion of
10 this article you can point to which you suggest warrants
11 the innuendo that you attribute to the article taken as
12 a whole?

13 MR. FIELD: With respect to the criminality, your
14 Honor. There is a part in the article, on page 6 of our
15 brief --

16 THE COURT: I am referring to your paragraph 33.
17 You state that by the article, and you are familiar with
18 the paragraph Mr. Abrams read, defendant meant, intended
19 to mean or understood to mean by persons reading the said
20 article that Bordoni had participated in criminal acts in
21 violation of the federal banking statutes and other federal
22 statutes, rules and regulations, including but not limited
23 to disclosure of claims which public and banking corporations
24 such as Franklin are subject.

25 Which specific portions of this article do you say

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2 warrant the innuendo?

3 MR. FIELD: Your Honor, first, if I may precede
4 my answer with a statement that the Washington Post is
5 a sophisticated newspaper --

6 THE COURT: We are talking about the Times?

7 MR. FIELD: I am sorry, The New York Times. I
8 was afraid I would make that mistake this afternoon.

9 THE COURT: It is just too bad that -- I must take
10 the responsibility myself, that I didn't have the complaints,
11 because each case is a separate case, really, and they are
12 not related cases simply because they are libel suits, but
13 it is done and that is it.

14 MR. FIELD: With respect to the New York Times,
15 your Honor, certainly the interests in the Franklin Bank's
16 activities was one in which businessmen-bankers would be
17 very much concerned and they are basically the people to
18 whom this article is directed.

19 With that in mind, your Honor, the article does
20 say, "This loophole, coupled with Mr. Bordoni's resignation"--

21 THE COURT: What page is that? That is talking
22 about Mr. Sindona, not about Mr. Bordoni?

23 MR. FIELD: Well, it is, yet, your Honor, the
24 article indicates that Mr. Bordoni is closely linked to
25 Mr. Sindona.

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2 THE COURT: Well, you say -- all right, let's
3 stick with that. You say, "This loophole, coupled with Mr.
4 Bordoni's resignation, heightened the impression that Mr.
5 Sindona might be withdrawing, either by plan or from
6 pressure from the regulatory authorities, in Franklin."

7 Do you suggest that conveys the idea of criminal
8 conduct or prospect of criminal prosecution?

9 MR. FIELD: In all candor, your Honor, I must say
10 if we just take those words and divorce them from the article,
11 no, but in the context in which it was written --

b4 12 THE COURT: I know what the law is, I take the
13 article as a whole, but you don't say take the article
14 as a whole and disregard the specific items.

15 What else is there?

16 MR. FIELD: With respect to that particular
17 instance that your Honor has stated, other than making
18 the statement that the Federal Government Insurance Corpora-
19 tion is in the picture, there is nothing else, but --

20 THE COURT: Am I correct, Mr. Field, that your
21 innuendo pretty much centers about this paragraph, or
22 actually two paragraphs, headed "Sindona has loophole,"
23 taken together with the rest of the article?

24 MR. FIELD: That is correct, your Honor.

25 THE COURT: But you must refer to these two

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2 paragraphs. In other words, if you didn't have these two
3 paragraphs, there wouldn't be a basis for any innuendo?
4 I think you would have to agree with that?

5 MR. FIELD: Not as to criminality, your Honor.

6 THE COURT: Well, what else do you claim?

7 MR. FIELD: We claim that the article in the
8 beginning, in stating that Mr. Bordoni played an important
9 role in pushing the Franklin Bank into foreign exchange
10 trading in a major way and then followed by the statement
11 that it was the foreign exchange trading that the Franklin
12 lost 45.8 million dollars on, is certainly an imputation
13 on Mr. Bordoni's ability and business expertise, if he
14 was the one responsible for the pushing. The word "pushing"
15 is a very volatile word. It doesn't mean that he suggested,
16 it means that he actually forced the bank --

17 THE COURT: What paragraph is that?

18 MR. FIELD: It is the second paragraph of the
19 article, your Honor. It starts, "The man leaving the board
20 is Carlo Bordoni, a Milan banker and director of Fasco
21 International, who played an important role in pushing--

22 THE COURT: I don't see that-- oh, I see.

23 MR. FIELD: We underscored in our brief those
24 portions we felt applied to Mr. Bordoni. That is on page 4
25 of our brief.

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2 The pushing, your Honor, giving the ordinary
3 dictionary term, which we have cited in our brief, according
4 to Webster's Seventh New Collegiate Dictionary, "marked by
5 tactless forwardness of officious intrusiveness. See
6 aggressive," and the word "push" means to press against
7 opposition.

8 They are really saying Bordon is to blame for
9 these foreign currency transactions. That is the normal
10 and ordinary meaning that would be ascribed to those words.

11 Mr. Bordoni's ability to act in the international
12 banking field depends upon his character and integrity
13 being unimpeachable and in his transactions not being
14 defamed.

15 The defamation that occurred here was in
16 ascribing to him this tremendous loss incurred by the
17 Franklin Bank, which was not merely one transaction, your
18 Honor, but a series of transactions over a substantial
19 period of time. Since Bordoni was on the board of directors
20 of the Franklin Bank and these foreign exchange transactions
21 occurred over the period of a year to a year and a half,
22 they were continuous. So his pushing denotes a continuous
23 act on his part to continue the Franklin Bank into these
24 various transactions.

25 The important role which they say Bordoni played

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is one not merely that he was on the board of directors but one who possibly championed this and one of influence or importance who played a crucial part in having the bank go into these foreign currency transactions.

The articlesays "In a major way." Now, a major way means a commitment, really a major, substantial commitment on the part of the bank, and the amount of the loss speaks for itself as to the amount of foreign currency trade that must have been conducted by the bank during this period of time. If he had nothing to do with the foreign currency transactions, which is admitted by the defendants, then certainly the clear words here indicate that the man so far as his business integrity has been defamed and it is libelous per se.

If it is libelous per se, we need not plead special damages. I think we are all agreed basically as to what the law is, I think we all say we concede the law to be a shoe, but the defendants say it doesn't fit Bordoni's foot. We think it does. We think it is elastic, adjustable, and we think the facts here, particularly the statements in the articles and in view of today's climate of investigations and fraud by public officials, by people in business, the Equity Funding scandal, the Watergate situation, that an ordinary reader would pick up this article and say, "This

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2 fellow Bordoni did all these transactions and was responsible
3 for the losses."

4 With respect to the innuendo, your Honor, we
5 don't feel the cases cited by the defendant require us to
6 plead the innuendo any more than we have done in the
7 complaint.

8 They have cited two cases in their reply brief,
9 which we just received, either last night or this morning,
10 and the two cases that they have are easily distinguishable
11 from the case at bar.

12 In one case, the Rowe case, the article did not
13 defame the plaintiff in the trade or business, and the court
14 did not state that the innuendo should necessarily be pleaded
15 in the complaint.

16 The other one, the Cole-Fisher case, the plaintiff
17 was not even named in the article and he said, "But by
18 innuendo this article applies to me," and the court said,
19 "Well, you should plead it," but didn't say it was a
b5 20 necessity to plead it.

21 In the case before the Court, Bordoni was named
22 and it was laid at his feet, the substantial loss incurred
23 by the bank, and he was very substantially damaged as a
24 result of this article.

25 MR. ABRAMS: Your Honor, can I make one comment?

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2 Mr. Fields made reference to the climate in which we live
3 today and it does seem to me that it is worth saying that
4 it is very important that newspapers be encouraged,
5 permitted and not subject to libel recoveries or libel
6 lawsuits for getting into this area of investigative re-
7 porting, when they do, and financial reporting, when they
8 do. There is no nice story that is as current or as large
9 in America today as the economy. This was a big story re-
10 ported we think accurately and well. We don't admit that
11 Mr. Field finds any inaccuracy in it, but it is very im-
12 portant in the cases, such as New York Times v. Sullivan,
13 which make clear the degree to which the press must be
14 free to go out and get stories and report them in an un-
15 inhibited way. We think libel suits as to stretching words
16 to mean things they didn't say challenges the same kind of
17 principle, albeit in a different way, that the Sullivan
18 case was --

19 THE COURT: Is there any issue here on Sullivan v.
20 New York Times?

21 MR. ABRAMS: No, your Honor, except I think it is
22 fair to respond to the climate argument by saying the
23 climate ought to be the First Amendment climate which the
24 Sullivan case in its area set forth. If this case goes on,
25 it will be our position that Mr. Bordoni is a public figure

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2 and all those rules apply.

3 MR. FIELD: Your Honor, if I may add one or two
4 words, I am sure your Honor is aware of the recent case of
5 Welch v. Gertz, which gives the private citizen, not a
6 public figure, the right to sue for libel.

7 THE COURT: There is always an issue of whether
8 or not the plaintiff is a public figure within the large
9 definition of the various cases. Would there be any question
10 in the light of the allegations you made in your complaint
11 that he is a public figure? Isn't that part of your claim?
12 You build him up as a big international banker; you can't
13 have it both ways, can you?

14 MR. FIELD: First, that is not at issue in this
15 motion, your Honor, and, secondly, we do not feel a man is
16 a public figure because he may be an expert in his particular
17 field and I think that would be a question for the jury to
18 decide if this case ever gets that far, survives this motion.

19 With respect to jury cases, your Honor, Sanderson
20 v. Caldwell, a New York Court of Appeals case, said, "If
21 the words are capable of a construction which would make
22 them actionable although at the same time an innocent sense
23 can be attributed to them, it is for the jury to determine
24 upon all the circumstances whether they apply to the
25 plaintiff and in what sense they were used."

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2 It appears to me that the defendant must convince
3 your Honor that our complaint is so unreasonable that your
4 Honor must say as a matter of law there is no possible way
5 it could be libelous per se, otherwise I believe your
6 Honor must dismiss the motion and say it is a question for
7 the jury to decide based upon the whole article and under
8 the circumstances whether it is libelous per se.

9 THE COURT: I would like in the light of argument
10 by Mr. Field any other cases that you may have, Mr. Abrams,
11 on whether or not at this stage of the proceeding this is
12 an issue of law to be decided by the court.

13 MR. ABRAMS: I would like to refer to the case
14 of Tracy v. Newsday, 5 New York 2d, 134, which was a New
15 York Court of Appeals case, 1959, and just read one paragraph
16 to the court:

17 "The general rule as we stated in Nichols v. Item
18 Publishers is that a writing is defamatory, that is,
19 actionable without allegation or proof of special damages
20 if it tends to expose a person to hatred, contempt or
21 aversion, or to induce an evil or unsavory opinion of him
22 in the minds of a substantial number in the community,
23 even though it may impute no moral turpitude to him. And
24 to that listing of the defamatory should be added a writing
25 which tends to disparage a person in the way of his office,

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THE COURT: That doesn't answer what I asked you.

MR. ABRAMS: I stopped too soon, your Honor.

In one case the court stated the rule in this

it is, simply, whether the explanation given is a legitimate

question, must be, in all cases, the exclusive province of

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2 the court."

3 We think that case is responsive, your Honor,
b6 4 and we have cited others as well.

5 THE COURT: I must say, in all candor, from
6 some little experience I have had with this field that
7 sometimes the cases under New York law are not as definitive
8 as sharply defined as they might be. I say that with the
9 greatest respect to the highest court of the state.

10 MR. ABRAMS: Having just come to read them, I
11 cannot quarrel with that, your Honor.

12 THE COURT: I had this experience in the Reynolds-
13 Pegler case, trying to decide what the law of New York
14 State was.

15 What is the next motion, gentlemen? Decision
16 reserved.

17 Are all your papers in in this matter?

18 MR. ABRAMS: Yes, your Honor.

19 (Pause)

20 MR. FIELD: If it please the Court, we have amended
21 by stipulation orally between counsel for the plaintiff
22 and defendants with respect to jurisdictional allegations
23 as follows:

24 Paragraph 3 is amended to read: "Upon information
25 and belief, defendant Washington Post (Washington) is a

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2 corporation organized and existing under the laws of
3 Delaware and maintains its principal place of business
4 at 430 Madison Avenue, New York, New York, and an office
5 in Washington, D.C., and is doing business within this
6 judicial district."

7 Paragraph 4 is amended to read, "Upon information
8 and belief, defendant Jack Egan (Egan) is a citizen and
9 resident of Washington, D.C., is an employee of defendant
10 Washington and has his office at 1150 15th Street Northwest,
11 Washington, D.C., and is doing business within this judicial
12 district."

13 Paragraph 5 is amended to read, "Upon information
14 and belief, defendant B.C. Bradlee (Bradlee) is a citizen
15 and resident of Washington D.C., is an employee of defendant
16 Washington and has its offices at 1150 15th Street Northwest,
17 Washington, D.C., and is doing business within this judicial
18 district."

19 MR. CALIFANO: If your Honor please, my name is
20 Joseph Califano, a member of the firm of Williams, Connolly
21 & Califano, of Washington, D.C., and I am a member of the
22 bar of the Southern District.

23 May it please the Court, I will rest on the law
24 as Mr. Abrams has stated it and I think the agreements
25 with respect to the law and the issues are fairly well set

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2 out in the discussion Mr. Abrams and Mr. Field had.

3 I would like to give the story of the Washington
4 Post itself --

5 THE COURT: What law do you say applies in this
6 diversity action?

7 MR. CALIFANO: We believe it is the law of the
8 State of New York, that we are all under the law of the
9 State of New York.

10 THE COURT: Where was the publication?

11 MR. CALIFANO: The Washington Post is published
12 largely in Washington D.C. That is where its major circula-
13 tion is, but there are-- a ballpark figure -- at least
14 2,000 copies a day coming into New York City, for example.

15 THE COURT: Have you agreed upon that, Mr. Field,
16 that the law of New York State applies?

17 MR. FIELD: Yes, your Honor.

18 MR. CALIFANO: Your Honor, the plaintiff Bordoni
19 complains of two Washington Post stories, the first running
20 on Saturday, June 22nd, an article headlined "Merger plan
21 for Franklin far advanced," a 17-paragraph story, four of
22 the paragraphs of which dealt with Mr. Bordoni, and the
23 second article ran on Wednesday, June 26th, and was headlined,
24 "Deals aimed at profits for Franklin." That was a 16-paragraph
25 story, four paragraphs of which dealt with Mr. Bordoni.

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2 With respect to the first Washington Post story,
3 the story of June 22nd, the allegations are both with respect
4 to the words of the story itself, which we contend do not
5 constitute libel per se and, again, a single innuendo
6 is alleged in paragraph 33 of the complaint relating to
7 virtually the same as The New York Times innuendo, saying,
8 "By said article the defendants meant, intended to mean
9 and were understood to mean by persons reading the said
10 article that Bordoni had participated in criminal acts
11 in violation of certain federal banking statutes and other
12 federal statutes, rules and regulations, including but
13 not limited to disclosure requirements to which public
14 and banking corporations such as Franklin and the bank
15 are subject."

16 With respect to the June 22nd article, I would
17 submit there is nothing in the Washington Post story
18 that would lead to that innuendo. The four paragraphs
19 dealing --

20 THE COURT: Which are the four paragraphs?

21 MR. CALIFANO: Paragraphs 7 through 10 of the
22 story, your Honor.

23 THE COURT: Starting "Bordoni, a Sindona intimate"--

24 MR. CALIFANO: No, the paragraph before that,
25 your Honor, "It was also learned yesterday"--

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2 The first part of the story, the first six
3 paragraphs, deal with the merger and the banks and the
4 consideration of the possibility of a merger with Franklin.
5 Then the story has four paragraphs on Bordoni. The first
6 one says, "It was also learned yesterday that Carlo Bordoni,
7 a director of Franklin New York Corporation, holding
8 company for the bank, resigned at the board's request on
9 Thursday although this has not been publicly announced."
10 That paragraph we contend clearly under the New York State
11 law does not constitute libel per se. There are cases
b7 12 cited in our brief and I would mention the Nichols case,
13 which involved the removal of a pastor against his will,
14 and the Loudon case, which involved the report of the
15 discharge of an individual employed by Mohawk Aircraft
16 Corporation for certifying a pilot who should not have
17 been certified.

18 In both those cases, your Honor, the reports
19 of the forced removal of the pastor and the report of the
20 discharge of the Mohawk employee for improperly certifying
21 a pilot, both of those reports were taken as false and
22 in both cases the New York courts held they did not
23 constitute libel per se.

24 Here we do not say he was discharged, we say
25 he resigned at the board's request, and there are obviously,

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2 particularly in the world of corporations and international
3 banking, any number of reasons why a man could resign,
4 policy disputes, other interests, a change in the operation
5 of the bank, moving away from their recent involvement in
6 foreign exchange transactions.

7 The second paragraph which refers to Bordoni
8 says, "Bordoni, a Sindona intimate and involved in multiple
9 business enterprises in Sindona's far flung financial web
10 was formerly a foreign exchange trader with an international
11 reputation for the scale of his speculation."

12 Your Honor, there I would cite the Labouisse,
13 L-a-b-o-u-i-s-s-e, case, cited in our brief, in which
14 a man was accused of speculating largely in the cotton
15 market in order to capture it and totally control it, and
16 that was held to be not libelous per se.

17 I would also note that that paragraph, as others
18 here, must be read against this complaint in the sense that
19 the complaint alleges that Mr. Bordoni is quite a man in
20 the foreign exchange area. It says in paragraph 11 that
21 Bordoni has dealt, after listing foreign as well as domestic
22 banks with which he is associated -- "Bordon has dealt with
23 some of the largest banks in the world in the areas of
24 international banking" --

25

THE COURT: I don't see that. The next paragraph

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2 reads, "Bordoni has" --

3 MR. CALIFANO: I was going to the complaint, your
4 Honor. I will go through the paragraphs of the story first.

5 The next paragraph says, "Bordoni has been credited
6 with organizing Franklin's foreign exchange department
7 when Sindona purchased 22 per cent of the bank's stock in
8 1972 and introducing his own style of high-volume foreign
9 exchange speculation."

10 I would mention with respect to that, those two
11 paragraphs, the one I just read and the one I mentioned
12 before -- those I would like to compare with the language
13 of the complaint, certain paragraphs in the complaint.

14 Paragraph 11, in which plaintiff alleges after,
15 as I said in prior paragraphs, listing Mr. Bordoni's various
16 international banking associations -- paragraph 11, "Bordoni
17 has dealt with some of the largest banks in the world in
18 the areas of international banking and monetary transactions
19 and among other things was responsible for the founding
20 and growth of the Milan branch of First National City Bank
21 and the growth of Banca Unione."

22 In paragraph 12, the plaintiff alleges that on
23 or about August, 1972, and it is 1972 that is the date to
24 which the Washington Post story attaches, Bordoni introduced
25 the style of the bank -- "On or about August, 1972, Bordoni

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2 was elected an outside member of the board of directors
3 of Franklin New York Corporation, a holding company whose
4 principal subsidiary is Franklin Bank. In addition, since
5 1972, Bordoni has been a member of Franklin's international
6 executive committee which is composed of certain members of
7 the board of directors of Franklin National Bank."

8 Then in paragraph 14 of the complaint, your Honor,
9 "Due to his reputation, financial and banking acquaintances
10 and contacts in the European financial community, Bordoni
11 assisted in the placement of approximately 750,000,000,
12 almost three-quarters of a billion, Eurodollar funds into
13 London, England, Nassau and Bahamas and branches of the
14 bank."

15 Your Honor, I would suggest that reading the
16 story against the complaint it is fair to say that Bordoni
17 has his own style of high volume foreign exchange specula-
18 tion and there is nothing inappropriate, no suggestion--

19 THE COURT: How do you read "a high scale of
20 speculation" in those paragraphs you read?

21 MR. CALIFANO: I don't see "high speculation,"
22 your Honor. It says "high-volume foreign exchange specula-
23 tion." I think foreign banks speculate in foreign exchange
24 the way individuals speculate in the stock market. There
25 is nothing derogatory about those words.

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2 THE COURT: That is the argument you made before,
3 but in reading these paragraphs all that really conveys
4 is that he is engaged in rather substantial transactions
5 in the international financial world and evidently plaintiff
6 may be resting something on the fact that you refer in
7 the second paragraph to, "With an international reputation
8 for the scale of his speculation," and in the subsequent
9 paragraph, "in introducing his own style of high-volume
10 foreign exchange speculation."

11 You say paragraph 14 suggests speculative
b8 12 activities?

13 MR. CALIFANO: I suggest there is nothing
14 derogatory about that, your Honor.

15 THE COURT: I understand that argument.

16 MR. CALIFANO: Your Honor, I suppose--

17 THE COURT: You are saying in this day and age
18 in the financial world if you refer to a man as being
19 engaged in active financial speculation, whether in
20 commodities, shares, Eurodollars or anything else, this is
21 nothing of an opprobrious nature?

22 MR. CALIFANO: That's right. I suppose the
23 complaint goes to the fact that there is certainly high
24 volume activity involved in the numbers and levels in
25 plaintiff's complaint.

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The last paragraph in the June 22nd story says, "Bordoni's exit follows the firing of a foreign exchange trader who the bank charged with falsifying records and hiding transactions. In addition, the head foreign exchange trader for Franklin and the executive vice chairman in charge of this area resigned," and then in the following paragraph it is noted that the president of the board, Mr. Gleason, resigned.

I suggest, your Honor, that paragraph is carefully written. The person whom the Frankly identified as falsifying records and hiding transactions is obviously not Mr. Bordoni, it is another foreign exchange trader. There is nothing to imply that Mr. Bordoni was involved in any activity of that kind.

With respect to the June 26th story which is the second story that plaintiff complains of, I would refer the Court to paragraphs 12, 13, 14 and 15, which are the four paragraphs that deal specifically with Mr. Bordoni.

Before reading those paragraphs, I would like to note that the lead sentence and the lead of the story of June 26th, which, as the Court has indicated, the stories must be read as a whole, says, "Italian financier, Michele Sindona, Franklin National Bank's largest shareholder, may

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have directed foreign exchange transactions to Franklin in 1973 and early 1974 from other foreign banks the controls in order to guarantee a profit for Franklin, federal investigators said today." Note that when the writer of the story in the Washington Post wanted to state somebody has done something, has directed a transaction, he states it quite clearly, the following paragraph it is as follows:

THE COURT: I have one question to ask you. I have looked down these allegations for the paragraphs referred to here, and could the plaintiff reasonably argue with respect to the last paragraph, "Bordoni is credited with organizing Franklin's foreign exchange operations in 1972 and introducing the high-volume speculative style he has been noted for and which some observers feel he got the bank into trouble" -- would that be an adverse reflection upon his capacity as an international banker, the sentence I just read to you?

MR. CALIFANO: Your Honor, I would note two things about that, one, as in the prior article, the involvement of Bordoni is the involvement of setting the style of operations in 1972, two years before these events took place, and these events we are talking about in terms of losses are the first five months of 1974, and when Bordoni's activities are mentioned in either of these Washington Post

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1 stories they are keyed directly to 1972, which is the
2 time when Mr. Bordoni joined the bank, according to the
3 complaint, went on the international executive committee,
4 according to the complaint, and it was presumably subsequent
5 to the period when he joined the bank that he was involved
6 in placing the three-quarters of a million dollars in
7 Eurodollars.
8

9 With respect to the second portion of that, namely,
10 "And which some observers feel got the bank into trouble,"
11 I handle it at several levels: One, there are specific
12 statements, there is a specific statement in this story
13 that nothing illegal was done" --

14 THE COURT: Where is that?

15 MR. CALIFANO: That statement appears, your Honor,
16 in the fifth paragraph of the story.

17 THE COURT: It says "he." Who is the "he"?

18 MR. CALIFANO: He is a source, presumably a
19 federal investigator, although I do not know, a government
20 source of some kind, apparently. He added, "There might
21 be nothing illegal in any of this as far as the Franklin
22 is concerned, although he said he did not know if the
23 parties involved on the other side of the foreign exchange
24 trades" -- I would also note that phrase must be read in
25 the context of the first paragraph referring to Bordoni.

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2 in this article, which says, "The source confirmed that
3 the Comptroller of the currency was looking into the in-
4 volvement of Carlo Bordoni in Franklin's foreign exchange
5 operations but said this was not related to his evaluations
6 of transactions related to recent losses."

7 THE COURT: I just saw an article and I wonder
8 why you have not mentioned this, because apparently the
9 plaintiff, I don't know, but I suspect, will make a reference
10 to this so-called speculative emphasis, "foreign exchange
11 transactions are basically speculations on the future
12 movements of currencies."

13 I am suggesting the very nature of the foreign
14 exchange, according to this article, is speculative

15 MR. CALIFANO: Well, your Honor, that paragraph,
16 which is a paragraph in the story, which is explaining
17 to the reader, as you go on -- I must read it in the context
18 of the next two or three sentences -- is to explain to the
19 reader what a man does in terms of speculation: when he
20 invests in the foreign market, as you have no doubt read,
21 a trader will buy for future delivery currency at a sub
b9 22 price in the hopes that it will go up. He will sell a
23 currency with a future delivery in the expectation that
24 it will go down. In either case, he makes a profit. If
25 a currency proves contrary to expectations, it produces

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2 a loss.

3 I would suggest, your Honor, that the speculations,
4 those following sentences explaining exactly what the word
5 "speculation" means.

6 THE COURT: It is buying futures?

7 MR. CALIFANO: Yes, which is commonly called
8 speculation throughout the entire business community
9 every day in the New York Times, the Washington Post, the
10 Journal of Commerce, the Wall Street Journal, and it is
11 certainly not a derogatory term.

12 I would like to note also, your Honor, with
13 respect to the remaining paragraphs in the June 26th story
14 that mention Mr. Bordoni that the second paragraph, which
15 mentions him simply restates what has already been said,
16 "Bordoni a former foreign exchange trader, is involved
17 in many of Sindona's enterprises. He was put on the board
18 of Franklin Holding Company for the bank in 1972. He
19 resigned from the board last Thursday with no reason given."
20 Not only no attribution of a reason by the writer, but
21 specifically stating no reason given.

22 The very next paragraph, Mr. Bordoni can hardly
23 complain about because it contains his own denial that
24 his resignation -- "Today denied he resigned at the request
25 of the Franklin board and said he was not involved in foreign

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exchange transactions which led to Franklin's losses.

^{News}
Dow-Jones knew his report."

And then the final paragraph -- there is one other paragraph in the story, which is the final paragraph of the story itself, in the context of investigations here, that notes that the investigation by the Comptroller of the currency as to whether there was any fraud involved in the recent foreign exchange losses is continuing and includes everyone, from the lowest -- from the newest employee to the top of the bank.

With respect to the one point your Honor raised, the phrase "which some observers feel got the bank into trouble," to the extent that that indicates anything about Bordoni, it indicates, yes, his style as applied by people that were operating the program may have gotten the bank into trouble, but to say, as we note ³ in our brief, our reply brief, which we brought with us today and served today, that if Stan Musial teaches somebody how to stand at the plate and two years later -- two years later --

because every reference to Bordoni in the story is 1972, that player, using that batting stance strikes out, it does not mean either that Musial is an incompetent batter, that Musial is generally an incompetent batting teacher, that Musial was responsible for the poor batting of the

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2 individual or that anyone other than the player himself
3 was responsible for the poor batting.

4 Our reference is to style. I would also say
5 this is a single instance, under New York State law, with
6 respect to Bordoni and I would note in that connection
7 what might be called the seminal case, Foote v. Brown, which
8 established the single instance rule, did note that one of
9 the bases for that rule is related, if you will, to
10 First Amendment values which affects, it seems to me, all
11 of these cases involving major news events of this kind
12 involving one of the major issues of our day.

13 I quote a sentence from the key language in
14 Foote v. Brown where the court said, "To carry the right
15 of action so far would be unnecessary for the protection
16 of any profession and would be an unreasonable check upon
17 the freedom of discussion. There is no physician however
18 eminent who is not liable to mistake the symptoms of a
19 particular disease or any attorney who may not misunderstand
20 complicated nature and legal consequences of a particular
21 litigation. There being no special damages averred in this
22 case, judgment ought to be arrested."

23 I rest on that language, unless your Honor has
24 questions.

25 MR. FIELD: If it pleases the Court, for the

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2 record, my name is David Field, with DiFalco, Fie' &
3 O'Rourke, 605 Third Avenue, New York City.

4 Your Honor, I think my eminent adversary has lost
5 sight of the fact that Carlo Bordoni had no part in the
6 foreign exchange transactions conducted by the Franklin
7 Bank. Therefore, the article attributing to him the in-
8 ception and the continuation of foreign currency transactions
9 is, in and of itself, an untrue statement, will, to

10 THE COURT: Mr. Field, do I go into that, as to
11 whether or not he had any part in these transactions on
12 this motion?

13 MR. FIELD: Your Honor, for purposes of a motion,
14 it is my opinion, to dismiss the pleadings the defendants
15 must accept as true the plaintiff's allegations.

16 THE COURT: Is that the allegations, that he had
17 no part in it?

18 MR. FIELD: The allegation is that he had no part
19 in foreign currency transactions. It is that way in all
20 the complaints, your Honor.

21 In paragraph 13 of the complaint, "Bordoni as
22 an outside director of the board of directors of Franklin
23 was never involved directly or indirectly in the performance
24 of any duties other than those of an outside director,"
25 and, your Honor, specifically paragraph 15 says --

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2 THE COURT: You are skipping paragraph 14?

3 MR. FIELD: I thought it was paragraph 14.

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4 THE COURT: I don't see how you can take that
5 position in light of the broad sweep of paragraph 14. He
6 may have been an outside director, and you specifically
7 allege, "Due to his reputation, financial banking ac-
8 quaintances and contacts in the European financial community,
9 Bordoni assisted in the placement of approximately three-
10 quarters of a billion Eurodollar funds in London, Nassau,
11 Bahamas" -- how can you really say that, what you just said?

12 MR. FIELD: It had nothing to do with the internal
13 affairs of the company; it was a particular transaction
14 he was called upon to consummate for the bank and that was
15 the raising of those Eurdollar funds.

16 THE COURT: How can I disregard this allegation
17 of your complaint?

18 MR. FIELD: Paragraph 15 relates specifically to
19 the foreign currency exchange transactions and says that
20 "At no time prior to his election as an outside director,
21 during his directorship or subsequent to his resignation
22 as a director was Bordoni responsible for any foreign
23 currency transactions to which the bank was a party."

24 THE COURT: What does that mean as against
25 paragraph 14?

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2 MR. FIELD: It is going into a specific trans-
3 action, your Honor, which is really the heart of the
4 articles of the Washington Post. We wanted to make it clear
5 to the Court not only did he not have any impact on the
6 day-to-day operations of the company but particularly with
7 reference to the foreign currency exchange transactions
8 of which the article accused him of fomenting. He had
9 absolutely nothing to do with them and that is why that
10 allegation is set forth in the complaint. For the
11 purpose of this motion, that must be deemed admitted, your
12 Honor.

13 The argument by counsel for the defendant breaks
14 apart each particular paragraph of the article. When you
15 break it apart and stand it on its own, there are parts
16 which might not be libelous per se but, again, your Honor,
17 they must be read as an entirety.

18 The cases say that and November v. Times, Inc.,
19 said, "The meaning depends not on isolated or detached
20 statements but on the whole apparent scope and intent of
21 the article. The words are to be construed not with the
22 close precision expected from lawyers and judges but as
23 they would be read and understood by the public to which
24 they are addressed."

25 The court went on to say, "No single sentence or

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2 declaration of alleged fact in that particular case,"
3 November v. Time, "is directly and boldly defamatory but
4 a jury should decide whether a libelous intendment would
5 naturally be given to it by the reading public acquainted
6 with the parties and the subject matter."

7 Incidentally, the November v. Time case related
8 to an attorney accused by the publication of having not
9 done his duty with respect to his client not in connection
10 with a particular proceeding but not having done his duty
11 in stages of these proceedings and the court held that
12 the single instance rule does not apply there, that the
13 slur against the attorney affected his entire reputation
14 as an attorney not in particular on one specific act and
15 it is our contention that the article casts disparity upon
16 Bordoni's entire reputation as an international banker.

17 I think when I get into the article, your Honor,
18 I can make that eminently clear.

19 In the case of Daily v. Engineering and Mining
20 Journal, the language claimed as defamatory stated of the
21 defendant that his extravagances startled people and finally
22 got the company into trouble. The court held that was
23 libelous per se and stated that "Charges even though they
24 do not impute to plaintiff disgraceful conduct would be
25 actionable if their tendency is to injure him in his

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particular business, calling, trade, or profession."

They have alleged in the article that Bordoni had a high style of speculation. Your Honor, in banking speculation is not a very pleasant word to use. Bankers are supposed to be conservative. The article not only says speculation in foreign currencies, it says high style of speculation. In fact, in the June 26th article it says foreign currency speculation is like shooting craps.

Your Honor, a banker is not supposed to shoot craps and any allegation that a banker did shoot craps certainly disparages his reputation.

Although the article of June 26th does cite an unnamed source as saying that there may not be anything illegal in the foreign currency transactions which resulted in a profit for the Franklin Bank, nevertheless the article does say that "The SEC and the Comptroller of the currency are investigating how much of Franklin's profits last year are the result of business deliberately shunted Franklin's way by Sindona's other banks and business enterprises."

The article ties in Bordoni to Sindona and Sindona's banks.

THE COURT: Except there is in the following paragraph, the second following paragraph, "The source confirmed the Comptroller was looking into the involvement

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2 of Carlo Bordoni in Franklin's foreign exchange operation
3 but said this was not related to miscalculation of trans-
4 actions related to recent losses."

5 MR. FIELD: Yes, your Honor, but that is like sayi
6 the SEC is investigating you and in the next paragraph
7 saying well, the SEC is investigating only one aspect,
b11 8 but there are other aspects to this as well.

9 If you go, your Honor, to the second from the
10 last paragraph and the last paragraph in that article, it
11 directly states, which is false, according to our client,
12 that "Bordoni is credited with organizing Franklin's
13 foreign exchange operations and introducing"-- well, your
14 Honor read it before, his high style speculative style
15 which got the bank into trouble.

16 The next sentence says, "An investigation of the
17 Comptroller into civil fraud."

18 Now, any reasonable person reading that is going
19 to link Bordoni to a possibility of fraudulent transactions,
20 or at least he is going to say, "I have to be careful in
21 dealing with this man because the newspaper said he is im-
22 plicated in foreign currency transactions which are like
23 shooting craps and that he is being considered by the
24 Comptroller of currency for fraud and that possibly the SEC
25 is investigating him as well."

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2 It is directly a slur and impeachment of the
3 man's credibility and his ability to conduct his business.

4 THE COURT: Do you agree, Mr. Field, that I have
5 to test these articles as against the innuendo as you have
6 alleged the innuendo in your complaint?

7 MR. FIELD: Your Honor, the innuendo is only one
8 cause of action. The innuendo only relates to the crime
9 and we pleaded --

10 THE COURT: Well, what else do you have here?

11 MR. FIELD: We allege direct libel in the first--

12 THE COURT: What do you mean by "direct libel,"
13 without any innuendo at all?

14 MR. FIELD: Without innuendo. We say the language
15 is clear on its face that this is the meaning people would
16 interpret. We are not saying we are enlarging it, extending
17 it, but reasonable people reading this article would say
18 that Bordoni was an international foreign currency speculator.

19 THE COURT: On that cause of action, who makes
20 that determination?

21 MR. FIELD: Your Honor, basically that determination
22 is for a jury to decide.

23 THE COURT: Can I give them the complaint and tell
24 them they have to decide?

25 MR. FIELD: No, your Honor. Basically it is on the

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evidence presented to the jury.

THE COURT: Well, they take the article and you just read the four corners of the article to decide whether something is libelous per se, don't you? Isn't that the law?

MR. FIELD: That plus the statement that Bordoni had nothing to do with foreign currency transactions by the bank. That fact, which would be admitted to the jury and the jury would accept it as true, which for the purposes of this motion it must be, and the article, the jury could then determine whether or not the article is libelous per se.

THE COURT: Go ahead.

MR. FIELD: Nowhere in the allegation of the complaint is it alleged Bordoni was a foreign currency speculator. It says he is an international banking expert but doesn't state that he is involved in any way at any time with foreign currency speculation.

With respect to the single instance, your Honor, which relates to one particular transaction in which one person -- in which a person was alleged to have committed one act and the courts have held that that one act would not be libelous per se without pleading special damages, I think I indicated to the Court that here the allegations of the article relate to a series of continuous foreign currency transactions and speculation by the bank and with respect

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1 to those it continued over a period of time and goes directly
2 to the man's ability to act as a foreign international
3 monetary expert. Any slur on his reputation that he was in-
4 volved in this tremendous Franklin National Bank loss in
5 foreign currency exchanges severely handicaps him in
6 continuing his business and continuing with his great
7 reputation as an international banker and in that respect,
8 your Honor, he has been defamed.

10 And the single instance, your Honor, does not
11 apply to the imputation of a crime but relates to the im-
12 putation of -- only to a trade or business, and the courts
13 have said if you are imputed to have committed a crime or
14 to have been involved in a crime, the single instance rule
15 does not apply, it only applies to trade or business, but
16 in our case it is not applicable because it was more than
17 one instance the articles allege Bordoni to have been in-
18 volved in.

19 THE COURT: All right, submit the papers in this
20 matter.

21 MR. FIELD: Your Honor, may I read the amendment?
22 Counsel for the defendant and counsel for the plaintiff
23 have orally amended the allegations with respect to juris-
24 diction as follows:

25 Paragraph 3 is amended to read as follows: "Upon

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information and belief defendant Twin Coast Newspapers,

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(Twin Coast) is a corporation organized and existing under

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the laws of the State of New York and maintains its principal

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place of business at 99 Wall Street, New York, New York,

6

and is doing business within this judicial district," and

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paragraph 4 is amended to read, "Upon information and

8

belief defendant Harold Gold (Gold) is a citizen and resident

9

of the State of New York, is an employee of the defendant

10

Twin Coast and has its offices at 99 Wall Street, New York,

11

New York, and may be found within this judicial district."

12

MR. SCHMEIDLER: Your Honor, I am an associate

13

of the firm of Amend & Amend and I represent the defendant

14

Twin Coast Newspapers, Incorporated, and Harold Gold in this

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action.

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The complaint in this action is a virtual copy

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of the complaints in the other actions which have been dis-

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cussed. The innuendo pleaded in the complaint is an exact

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copy of the innuendos pleaded in the other actions and

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there is really nothing new to be said about the law. The

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only difference between these actions is the content of

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the articles of which plaintiff complains, and our article

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does not attribute any responsibility for foreign exchange

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trading to the plaintiff, Mr. Bordoni. In fact, your Honor,

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to the extent that there is a discussion of responsibility

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2 for losses due to foreign exchange trading, the article
3 fairly clearly lays them at the doors of other people in
4 Franklin National Bank, and in paragraph 7 it refers to
5 the dismissal of the president of the bank and the resig-
6 nation of the executive vice chairman "In whose department
7 the losses occurred." So that to the extent the plaintiff
8 complains in his brief, but not in his complaint, of an
9 attribution to him of responsibility for the losses suffered
10 by the bank, there simply is nothing to that effect in
11 the article.

12 The innuendo in the complaint as to crimes that
13 may have been committed in making improper reports to the
14 government regulatory authorities, there is absolutely
15 nothing in the article that makes any suggestion that any
16 reports were made or that Mr. Bordoni had any part in
17 making any reports that the article doesn't refer to. That
18 innuendo is completely without support in the article.

19 The innuendos that are in the memorandum of the
20 plaintiff but not in his complaint are rebutted and are
21 a matter of law and I don't think it is necessary to go
22 through those innuendos one at a time especially since your
23 Honor has indicated that the motion must be decided on
24 the basis of the innuendos actually pleaded.

25 THE COURT: Mr. Field, what paragraphs do you rely

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2 upon to support your innuendos? First you claim it is
3 libelous per se, without reference to an innuendo?

4 MR. FIELD: The article as a whole has the meaning
5 that Bordoni was implicated in the foreign currency trans-
6 actions and that he was responsible for the losses. If I
7 may read you just a couple of paragraphs in the article,
8 paragraph 4 says, "Mr. Bordoni's exit from the board also
9 raised questions about his role in the bank's foreign
10 exchange trading."

11 THE COURT: What is libelous about that?

12 MR. FIELD: Your Honor, it goes on to say --
13 that standing alone is not, but the next paragraph says,
14 "The bank lost 45.8 million in foreign exchange transactions."
15 Now, if it is not true that Bordoni was involved in foreign
16 exchange transactions, then attributing to him this loss
17 is libelous per se.

18 In addition, it goes on to say, later on in the
19 article, that "Franklin disclosed discovery of large
20 losses in unauthorized foreign exchange trading" and later
21 in the paragraph, at the end, it says, "A Treasury official
22 said the government is investigating the possibility of
23 fraud in connection with the losses."

24 So there are statements in there which implicate
25 Mr. Bordoni not only in the foreign exchange losses in

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2 which he had no part but also in the possibility that
3 he may have been party to some fraud perpetrated on the
4 bank and the main thing, I think, your Honor, to keep in
5 mind is that he had nothing to do with this at all, that
6 he was never there --

7 THE COURT: I must say I can't accept that
8 statement in the light of your allegation in paragraph 14.
9 How can you say he had nothing to do with this when you
10 emphasize his participation in transactions running to
11 three-quarters of a billion dollars?

12 MR. FIELD: That was not a foreign exchange
13 transaction.. That is a funding of moneys, loans for the
14 bank. Foreign exchange transactions was amply stated in
15 the article written by the Washington Post. It is specula-
16 tion on whether or not currency goes up or down in the
17 future. It is like playing the commodities market. The
18 fact that Bordoni was instrumental in raising three-quarters
19 of a billion Eurodollars for the bank for its various
20 branches has absolutely nothing to do with foreign currency
21 exchanges. It was put in there to show the man had influence
22 with banks and was instrumental in the banking field and
23 that is basically all that allegation was put in theretto
24 represent.

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THE COURT: You say the Eurodollars have nothing

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2 to do with foreign currency transactions?

3 MR. FIELD: No, your Honor. Foreign currency
4 transactions would mean I would buy a million Swiss francs,
5 expecting the market six months from now to be higher in
6 Swiss francs than today --

7 THE COURT: That is what the article said, the
8 other article that was the subject of the prior suit?

9 MR. FIELD: That's correct. That is why in the
10 complaint we were careful to allege he had absolutely nothing
11 to do with the foreign currency exchange transactions of
12 the bank. He was on the international executive committee
13 but he had nothing to do with the foreign currency exchanges,
14 nor did he advise or push the bank into foreign currency
15 exchanges. If that is not true, your Honor, and with all
16 due respect, your Honor must accept it as true for this
17 motion, the article is false and defamatory and it would
18 be a question of fact for the jury to decide if in fact
19 the article has defamed Bordoni.

20 What your Honor would have to say is there is
21 no question of fact at all, no reasonable person could
22 believe this article was defamatory and therefore, as
23 matter of law, you are throwing it out. Quite the contrary
24 is true, based upon the interpretation of articles as cited
25 in the various cases that we have cited in which we really

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1 have no disagreement, counsel for the defendant or I, as
2 to how articles are to be interpreted, and I believe that
3 any reasonable person reading this article and knowing
4 Bordoni never had anything to do with foreign currency
5 transactions would say that these articles are libelous per
6 se.
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8 THE COURT: Where does this article state that
9 he had something to do with foreign exchange transactions?
10 Where does it say that he did?

11 MR. FIELD: Go down two more paragraphs: "Ac-
12 cording to the business magazine Successo, Mr. Bordoni
13 was chosen by Mr. Sindona to play a major part in Franklin's
14 foreign currency trading."

b13 15 THE COURT: How does that reflect upon him?

16 MR. FIELD: It continues, your Honor, "The presence
17 at Franklin of the foreign exchange expert Carlo Bordoni
18 explains everything." Explains what? Explains the losses,
19 your Honor. That is what it refers to.

20 THE COURT: It is referring to an article,
21 an article in the March issue of Italian magazine and they
22 are quoting from that.

23 MR. FIELD: Yes, but why is it used in this
24 particular article by the newspaper the Journal of Commerce?
25 It is used in here to show Bordoni had something to do

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2 with the tremendous losses at the bank in foreign
3 currency exchanges.

4 MR. SCHMEIDLER: I would point out the losses
5 referred to as being disclosed were not in March but the
6 disclosures referred to were in May and, similarly, I
7 point out as to the timing of the quotation or indirect
8 quotation as to investigation of the possibility of fraud,
9 that again the timing is such that it is clear that the
10 investigation had nothing to do with the resignation which
11 came well after such attribution.

12 MR. FIELD: That has nothing to do with his
13 resignation, your Honor. The investigation by the Treasury
14 official evidently relates to losses of unauthorized foreign
15 exchange trading, which the article says Bordoni was
16 responsible for. So that the whole article shows that
17 Bordoni was the one who was the major party libel for all
18 the losses the bank had and in fact they may have been
19 fraudulent.

20 MR. SCHMEIDLER: I would submit that "unauthorized"
21 contradicts the attribution of responsibility, that if
22 something is unauthorized you cannot say that it was
23 simultaneously authorized.

24 MR. FIELD: It is like saying a policeman shot
25 a convict but he was unauthorized. The fact is he still

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shot him.

THE COURT: Anything else? Is there any other party here? There was a fourth suit, wasn't there?

MR. FIELD: There was no motion made in that matter.

THE COURT: Against whom was that?

MR. FIELD: The Wall Street Journal.

THE COURT: All right.

A 77
Opinion; Bordoni v. Washington Post

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUL 15 1 19 PM '75
S.D.N.Y.

----- x
CARLO BORDONI,

Plaintiff,

74 Civil 3169

-against-

WASHINGTON POST COMPANY, JACK EGAN
and B. C. BRADLEE,

Defendants.

OPINION

#42799

----- x
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EDWARD WEITZEL, D. J.

This is another of four libel actions commenced by plaintiff based upon articles concerning the affairs of the Franklin National Bank ("Bank"), which refer to plaintiff's relationship to, and resignation as a director of, the Franklin New York Corporation ("Franklin"), the Bank's parent. The defendants in this case are the Washington Post Company, B. C. Bradlee, its Executive Editor, and Jack Egan, the reporter who wrote the alleged libelous articles.

Reference is made to and familiarity assumed with this court's opinion filed this day in plaintiff's action against the New York Times, ⁽¹⁾ since the parties agree that New York law is also applicable here. While the substance of the articles in this case parallels that of the New York Times article, the articles differ in language in some respects and must therefore be examined and passed upon independently.

At issue in this case are two articles published by the Washington Post, one on June 22 and the

(1) Bordoni v. New York Times Co., 74 Civ. 3168.

other on June 26, 1974. Here, as in the New York Times case, plaintiff, without pleading special damages, alleges the articles are libelous per se because they (1) cast aspersions upon him in his calling, and (2) charge that he engaged in criminal conduct. Here, too, as to each publication, four separate claims are advanced. Three, those that charge plaintiff was libelled in his calling as an expert in international monetary and banking affairs, do not rely upon an innuendo; the remaining claim, which charges the articles meant and were understood to mean that he had violated federal laws, relies upon an innuendo. The defendants in the instant case move for judgment on the pleadings on the ground that the complaint fails to state a claim upon which relief can be granted.

The June 22 Article - Claims 1 through 4

The article, headed "Merger Plan For Franklin Far Advanced," begins by stating that efforts are far advanced to merge "financially troubled" Franklin National Bank with another New York bank or with a major English financial institution; that "the major matter that needs to be cleared up is whether the Federal Deposit Insurance Corporation would assume substantial risk for

all potential losses that have not yet been uncovered."

The article then continues:

"On Thursday, Franklin National, 20th largest in the country, reported it lost \$63 million in the first five months of the year, with \$45.8 million attributed to foreign exchange speculation, most of it unauthorized, according to the bank."

The next three paragraphs describe the nature of the contemplated merger, name banks interested in the merger, and state that "[i]n order to restore confidence in the bank, any arrangement would entirely remove mysterious Italian financier Michele Sindona - now Franklins [sic] major shareholder - from the scene, according to the source." Plaintiff is not mentioned by name until the seventh paragraph, and thereafter in the eighth, ninth and tenth, as follows:

"It was also learned yesterday that Carlo Bordonni, a director of Franklin New York Corp., holding company for the bank, resigned at the board's request on Thursday although this has not been publicly announced.

"Bordonni, a Sindona intimate and involved in multiple business enterprises in Sindona's far-flung financial web, was formerly a foreign exchange trader with an international reputation for the scale of his speculation.

"Bordoni has been credited with organizing Franklin's foreign exchange department when Sindona purchased 22 per cent of the bank's stock in 1972 and introducing his own style of high volume foreign exchange speculation.

"Bordoni's exit follows the firing of a foreign exchange trader who [sic] the bank charged with falsifying records and hiding transactions. In addition, the head foreign exchange trader for Franklin and the executive vice-chairman in charge of this area resigned."

The article then refers to the resignation of the Bank's chairman and chief executive officer in the wake of a financial statement detailing the Bank's losses, discusses merger prospects, and observes that the Federal Reserve Board "is known to be reluctant to approve a situation where Sindona through Fasco [Sindona's personal holding company] would be the holding company in control of the bank."

We first consider plaintiff's three claims that he has been disparaged in his business calling, as to which no innuendo is relied upon. The opening statement, plaintiff resigned as a director at the Board's request, by itself carries no imputation of lack of integrity, nor does it cast aspersions upon his professional competence.

The article does not suggest that the request was based
(2)
upon any misconduct, incompetence or shortcoming.

The next paragraph quoted above, which describes Bordoni's intimate association with Sindona in vast financial enterprises and states that Bordoni was formerly a foreign-exchange trader with an international reputation for the scale of his speculation in foreign-exchange, does not reflect upon his professional competency or integrity. Close relationship with another who is engaged in multiple business enterprises or in a "far-flung financial web" does not cast aspersion upon one in his business life. So, too, that one has an international reputation for the scale of his speculation in foreign exchange does not denigrate his business stature. Speculation is a legitimate activity engaged in by many, whether in stocks, bonds, futures, commodities or foreign exchange. Absent a charge of illegal or reprehensible conduct or incompetence,

(2) Cf. Nichols v. Item Publishers, Inc., 309 N.Y. 596 (1956); Loadin v. Mohawk Airlines, Inc., 27 App. Div. 2d 517, 275 N.Y.S.2d 359 (1st Dep't 1966); Smith v. Staten Island Advance Co., 194 Misc. 299, 87 N.Y.S.2d 847 (Sup. Ct. 1950), aff'd, 276 App. Div. 978, 95 N.Y.S.2d 188 (2d Dep't 1950).

(3) Labatt v. Evening Post Pub. Co., 10 App. Div. 30, 41 N.Y.S. 600, 600 (1896).

such activity does not reflect upon one's professional standing. (4) No such charge is made.

The following paragraph states that Bordoni organized Franklin's foreign exchange department and introduced his own style of high volume foreign-exchange speculation. Responsibility for introducing a policy of foreign-exchange speculation by itself does not disparage one in his calling. The article nowhere suggests that the introduction of the foreign-exchange program was achieved or accompanied by improper conduct or dishonesty.

Plaintiff, however, argues that the earlier reference to the heavy losses "attributed to foreign exchange speculation, most of it unauthorized, according to the bank," when read together with the statement of Bordoni's "introducing his own style of high volume foreign exchange speculation," implies that the losses are attributable to him and thereby reflect upon his professional competence.

(4) One who was the trusted adviser to five Presidents and enjoyed a national and international reputation disavowed the title of banker and accepted that of speculator, which he defined as one "who observes the future and acts before it occurs." B. Baruch, Baruch: The Story 105, 247-49, 260 (1957); B. Baruch, Baruch: The Public Years 25, 31, 49, 220 (1960).

But the language of the article taken alone contains no such charge, and no such innuendo is pleaded. (5) Indeed,

even if such an innuendo were pleaded, it would be unwarranted. (6)

The article neither states nor implies that plaintiff's activities as a Bank director, or his organization of the foreign exchange department, were the cause of the Bank's losses. Introduction of a style of action is one matter; its implementation is another. The article nowhere suggests that once the foreign exchange department was organized, Bordoni participated in any of the transactions which resulted in the losses. Indeed, the statement that most of the foreign-exchange speculation was unauthorized points in another direction, particularly when considered with the reference to the discharge of the foreign-exchange trader whom the Bank charged with falsifying records and hiding transactions.

Thus the court concludes that a fair reading of the article in context, giving full import to those portions which mention the plaintiff, does not justify the

(5) *Bordoni v. New York Times Co.*, 74 Civ. 3168 at 11 n.9.

(6) *San Tracy v. Newsday, Inc.*, 5 N.Y.2d 134, 136-37, 182 N.Y.S.2d 1, 3-4 (1969).

three claims that the article is libelous per se. Moreover, the defect in these claims would not be cured by an allegation of innuendo that plaintiff was responsible for the foreign-exchange losses.

The fourth claim, which relies upon an innuendo that the article charged Bordoni with violation of federal criminal laws will be considered with the same claim as the June 26th article, since the claims are pleaded in hac verba.

The June 26th Article - Claims 5 through 8

This article is headed "Deals Aimed at Profits For Franklin." The first eleven of the sixteen paragraphs of the article make no reference to Bordoni. They begin by reporting a statement by federal investigators that Sindona "may have directed foreign exchange transactions to Franklin in 1973 and early 1974 from other foreign banks he controls in order to guarantee a profit for Franklin." After referring to the losses during the first five months of 1974, attributed "almost exclusively to unauthorized trading and falsified transactions," as independent of the "profitable foreign exchange business directed

to Franklin," the article continues:

"The source said that the foreign exchange trades set up for Franklin with other Sindona business interests earned the bank an automatic profit because the transactions took place at a favorable rate independent of the actual foreign exchange market rate.

He added that there might be nothing illegal in any of this as far as Franklin is concerned, but said he did not know if the parties involved on the other side of the foreign exchange trades with Franklin lost money or offset potential losses with other currency transactions."

Then follows a description of foreign-exchange trading:

"Foreign exchange transactions are basically speculations on the future movements of currencies. A trader will buy for future delivery of a currency at a set price in the hopes that it will go up. He will sell a currency with a future delivery in the expectation it will go down. In either case, he makes a profit. If a currency moves contrary to expectations, it produces a loss.

"One top bank regulatory official today said foreign currency speculation was 'like shooting craps.'"

The article continues that the Bank earned \$7.75 million in foreign exchange in the previous year [1973], approximately sixty per cent of the Bank's profits

for the year, and that the "SEC and the Comptroller of the Currency are investigating how much of [those profits] are the result of business deliberately shunted Franklin's way by Sindona's other banks and business interests."

The first mention of Bordoni is in the twelfth paragraph, followed by reference to him in the next three, as follows:

The source confirmed that the Comptroller was looking into the involvement of Carlo Bordoni in Franklin's foreign exchange operations but said this was not related to misvaluations of transactions related to recent losses.

"Bordoni, a former foreign exchange trader who is involved in many of Sindona's business enterprises, including the Milanese banks, was put on the board of Franklin New York Corp., holding company for the bank, in 1972. He resigned from the board last Thursday with no reason given.

"Bordoni today denied he resigned at the request of the Franklin board and said he was not involved in the foreign currency transactions which led to the Franklin losses, Dow Jones News Service reported.

"Bordoni is credited with organizing Franklin's foreign exchange operations in 1972 and introducing the high-volume speculative style he has been noted for, and which some observers feel got the bank into trouble.

"An investigation by the Comptroller into whether possible fraud was involved in the recent foreign exchange losses is continuing, according to a source, and includes everyone 'from the newest employee to the top of the bank.' The investigation into the whole foreign currency matter by the Comptroller is expected to wind up next week."

Plaintiff here, too, asserts four separate claims: in three, that the article defames him in his calling, and in the remaining claim, where he relies upon an innuendo, that it implies he violated federal criminal laws.

As in the instance of the June 22 article, plaintiff urges that since the article was intended to make an impact upon the business community, the court should interpret it as a banker, businessman and professional would interpret it. (7) So viewing it, and considering the article in its entirety and giving words their normal and rational meaning, the article is not libelous per se. Plaintiff points to no specific items in the article which support his charge that they impugn his competency, honesty or integrity in his professional calling. The

(7) Citing *Sullivan v. Daily Mirror, Inc.*, 232 App. Div. 507, 250 N.Y.S. 420, 424 (1st Dep't 1951).

Opinion; Bordoni vs. Washington Post

references to his being a former foreign-exchange trader his association with Sindona enterprises, his requested resignation, his organization of Franklin's foreign exchange operation, and his introduction of "the high-volume speculative style he has been noted for," are no more defamatory than the substantially similar statements in the June 22 article. The added reference that some observers felt that the high volume speculative style he introduced "got the bank into trouble" is not by itself libelous per se. As already noted, the article does not state or imply that following the establishment of the policy, Bordoni played any role in any of the foreign-exchange transactions which resulted in the losses. There is, of course, no assurance of success in any market purchase, and the fact that losses are sustained in the execution of a program does not stamp the initiator as incompetent in his calling.

So, too, the references to the Comptroller General's "looking into" Bordoni's involvement in Franklin's foreign-exchange operations, and to a continuing investigation by the Comptroller into possible fraud in connection with the recent foreign-exchange losses, which investigation included everyone "from the newest employee to the

Opinion; Bordoni vs. Washington Post

top of the bank," do not cast aspersions upon the plaintiff in his business calling. The Comptroller was engaged in the performance of his duties, and a statement as to the scope of his inquiry and those who may come within its embrace, without more, does not impugn plaintiff's business competency or integrity.⁽⁸⁾ Moreover, the article contains no statement that Bordoni is charged with a crime or that charges against him are under consideration. To hold libelous per se a statement that an authorized agency was "looking into" Bordoni's involvement in Franklin's foreign-exchange operations, the proper subject of official inquiry, would result in sterile news reporting.

The court concludes that the three claims which allege the article is libelous per se in that it reflects upon plaintiff's business competency and integrity afford no basis for relief and must be dismissed.

The remaining claim based upon the June 26th article alleges in haec verba the innuendo advanced with respect to the June 22nd article - that by the article the

(8) See Seeman, The Law of Libel and Slander 110 nn. 223, 229 (1954).

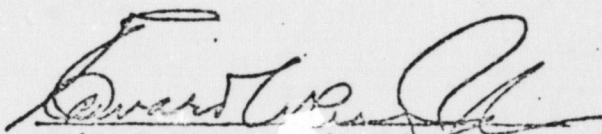
defendants meant and were understood by persons reading it to mean that Bordoni had participated in criminal acts in violation of federal banking and other laws, including disclosure requirements to which public and banking corporations such as Franklin and the Bank are subject. There is nothing in either article which justifies the asserted innuendo or that it is capable of the meaning plaintiff ascribes to it. As indicated above, there is no charge that plaintiff or any other person violated the federal banking laws, failed to make disclosures required by law, engaged in criminal conduct, or even was suspected of having engaged in criminal conduct. There is no suggestion, much less any statement, that Bordoni had any responsibility for Franklin's compliance with the disclosure laws. To infer that the articles charged plaintiff with participating in criminal acts is to enlarge impermissibly upon the plain meaning of the language used. In the instance of these articles, as in that of the New York Times case, where the same innuendo was pleaded, the conclusion is compelled that "the pleaded innuendo is strained, unreasonable and unjustified." It does not explain any statement in the article, but adds an entirely

Opinion; Bordoni vs. Washington Post

new and independent thought that finds no support in
(9)
the article."

The defendants' motion to dismiss the
complaint for failure to state a claim is granted.

Dated: New York, N. Y.
July 1, 1975


United States District Judge

(9) Tracy v. Newsday, Inc., 5 N.Y.2d at 137, 182 N.Y.S.2d

U.S. DISTRICT COURT

Jul 15 1 19 PM '75

S.D. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x
CARLO BORDONI,

Plaintiff,

-against-

NEW YORK TIMES COMPANY, INC., A.M.
ROSENTHAL and JOHN H. ALLAN,Defendants. :
----- x# 42801
74 Civil 3168

OPINION

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MICROFILM

Opinion; Bordoni vs. The New York Times

EDWARD WEINFELD, D. J.

This is one of four actions commenced by Carlo Bordoni against various publications charging that he was falsely libelled by news articles concerning the affairs of the Franklin National Bank ("Bank"), which, among other matters, described the circumstances of plaintiff's resignation as a director of Franklin New York Corporation ("Franklin"), the Bank's parent. The defendants in this case are the New York Times, A. M. Rosenthal, its managing editor, and John H. Allan, the reporter who wrote the alleged libelous article.

Plaintiff's complaint alleges he is an acknowledged international monetary, banking and financial expert. It sets forth four separate claims, none of which pleads special damages; rather, plaintiff relies upon allegations that the article in question is libelous per se and is actionable even without an allegation of special damages. The defendants move to dismiss the complaint on the grounds that (1) no statement defamatory of plaintiff is contained in the article, and (2) even if such a statement is found therein, under New York's "single-instance"

rule the complaint is deficient because of its failure to
 plead special damages. ⁽¹⁾ Thus the essential question is
 whether the article is libelous per se.

As a general rule, a writing or printed article is libelous per se -- that is, actionable without allegation or proof of special damages -- "'if it tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him in the minds of a substantial number of the community, even though it may impute no moral turpitude to him' . . . [or] tends to disparage a person in the way of his office, profession or trade." ⁽²⁾ So, too, a writing that charges the commission ⁽³⁾ of a crime is libelous per se.

The alleged offending article, which was published in the New York Times on June 24, 1974, reads as follows:

(1) Jurisdiction is grounded upon diversity of citizenship and the parties agree New York law applies.

(2) *Nichols v. Item Publishers, Inc.*, 309 N.Y. 596, 600-01 (1956), quoting *Hencher v. Chesley*, 297 N.Y. 94, 100 (1947). *Agard, Tracy v. Newsday, Inc.*, 5 N.Y.2d 134, 135-36, 187 N.Y.S.2d 1, 3 (1979).

(3) *Jordan v. Lewis*, 20 App. Div. 2d 773, 247 N.Y.S.2d 650 (1st Dep't. 1964).

"A director closely associated with Michele Sindona, the Italian financier who is the biggest shareholder in the Franklin New York Corporation - the parent of the Franklin National Bank - is resigning from the board of the holding company.

"The man leaving the board is Carlo Bordoni, a Milan banker and director of Pasco International Holding, S. A., who played an important role in pushing Franklin into foreign-exchange trading in a major way. Pasco is a Luxembourg investment company owned by Mr. Sindona.

"It was in foreign-exchange trading that Franklin lost \$45.8 million during the first five months of 1974, Franklin disclosed last Thursday in a long-awaited restatement of its earnings. The foreign-exchange loss was part of a \$63.6 million over-all loss reported by Franklin for the five months.

"Changes in Management.

"With Mr. Bordoni's resignation, Franklin's management in foreign-exchange trading has changed almost entirely.

"At the time Franklin's foreign-exchange losses were announced, Peter R. Shaddick, executive vice chairman and head of the bank's international operations, resigned. Andrew N. Carofalo, vice president and manager of the bank's foreign-exchange trading desk, resigned a short time later.

"Donald Emrich, a foreign-exchange trader with the rank of assistant cashier [sic], was dismissed by the bank when the foreign-exchange losses were first disclosed.

Opinion; Bordoni vs. The New York Times

"Then Franklin hired Edwin A. Reichers, a former senior vice president of the First National City Bank, as an executive vice president to reorganize its international currency trading operation.

"Whether the Bordoni resignation was merely a part of this foreign-exchange housecleaning or part of a downgrading of Mr. Sindona's influence at Franklin could not be determined. Mr. Sindona was not present at a Franklin board meeting last Thursday, but his absence was not unusual.

"Mr. Sindona has agreed to add as much as \$50-million in new capital to the Franklin New York Corporation as part of a plan announced May 12. The plan was originally designed to increase the capital of the bank by that amount.

"In the Franklin's release last Thursday, however, Harold J. Gleason, then chief executive, stated that the money raised by stock sales would not be funneled into the bank but would be retained by the Franklin New York Corporation to meet the obligations of the parent company.

"Barr Succeeded Gleason

"Mr. Gleason resigned last Thursday as chairman, president and chief executive officer, but he remained a director and also retained the title of executive vice chairman. Joseph W. Barr, former Secretary of the Treasury, took over immediately as chairman, president and chief executive. As chairman, of course, he is a member of the board of directors.

"Franklin New York Corporation has \$35-million of 7.30 per cent publicly held notes outstanding, and it also has a

\$30-million demand loan from the Manufacturers Hanover Trust Company. The publicly held notes mature in 1979, and the bank loan comes due in 1977.

"To raise \$50-million, Franklin New York has disclosed plans to make two stock offerings - one prior to Feb. 21, 1975, and the other before Aug. 21, 1975. Mr. Sindona has agreed to purchase any shares not bought by other stockholders.

"Sindona Has Loophole

"In its release Thursday, Franklin noted that Mr. Sindona's obligation to purchase unsubscribed shares in the two proposed stock offerings was subject to a continuation of the bank's normal business and also to an absence of lawsuits.

"This loophole, coupled with Mr. Bordoni's resignation, heightened the impression that Mr. Sindona might be withdrawing - either by plan or from pressure from the regulatory authorities - from Franklin.

"According to a published report in The Washington Post, efforts to merge the Franklin National Bank with either another New York bank or with a major English financial institution 'are far advanced.'

"Source is Quoted

"The report, quoting 'an authoritative sources,' [sic], said the major matter that needed to be cleared up was whether the Federal Deposit Insurance Corporation would assume substantial risk for any potential losses that have not yet been uncovered.

"Mr. Gleason, however, on Thursday stated: 'Neither the bank nor the corporation [is] presently a participant in any

negotiations involving a merger, sale of assets or other disposition of any interest in the bank.'

"Asked yesterday about the possibility of any merger plan's being 'far advanced,' Arthur G. Perfall, senior vice president of Franklin, replied: 'We stand by our statement of Thursday.'

"Wille Denies F.D.I.C. Role

"Frank Wille, chairman of the Federal Deposit Insurance Corporation, denied 'categorically' that the F.D.I.C. is participating or had participated in any discussion of a merger or sale of Franklin assets.

"Mr. Wille, who was at Sea Island, Ga., at a convention of Georgia bankers, said the F.D.I.C. was being kept informed also of what the Federal Reserve Board and the Controller of the Currency were doing.

"What we're all waiting to see,' Mr. Wille said, 'is the public reaction to the restated earnings and the management changes.'"

Essentially plaintiff charges that the above article is libelous per se in two respects: (1) that it defames him in his business reputation, professional competence and standing as an expert in international financial affairs, and (2) that it intimates he had participated in criminal acts in violation of federal banking and other laws.

As to the first charge, that the article libelled him in his business calling, the plaintiff contends this appears from its very language, without any innuendo. In this instance, he alleges three separate claims. The first, in addition to alleging that the article falsely impeached his professional competence and integrity, further charges that the defendant published it with knowledge of its falsity. The second claim substantially repeats the first, but alleges that the article was published in reckless disregard of the truth. The third claim⁽⁴⁾ substantially repeats the first two, but omits any charge of knowledge of falsity or recklessness.

With respect to these three claims, the complaint does not specify those statements in the article which plaintiff contends injure him in his business or profession, or impute to him some quality "which would be detrimental, or the absence of some quality which is essential to the successful carrying on of his office, profession or trade."⁽⁵⁾

(4) Listed as the fourth claim in the complaint.

(5) *Cole Fischer Pogue, Inc. v. Carl Ally, Inc.*, 20 App. Div. 2d 423, 427, 288 N.Y.S.2d 556, 562 (1st Dep't 1968), *aff'd*, 25 N.Y.2d 943, 305 N.Y.S.2d 154 (1969).

Since the libel complained of is with respect to plaintiff's business competence and integrity, it must appear that the article charged the plaintiff, in effect, with being "ignorant, incompetent, [or] incapable in his
(6)
calling," or otherwise impugned his professional standing and integrity.

In determining whether the article is defamatory, it must be read as a whole, and the words used given their natural import, and their plain and ordinary meaning.
(7)
So reading the article, with special emphasis on those portions which refer to plaintiff, the court concludes that the naked words of the article standing alone
(8)
are not libelous per se.

The article starts with the statement that

(6) *Amelkin v. Commercial Trad. Co.*, 23 App. Div. 2d 830, 259 N.Y.S.2d 396, 398 (1st Dep't 1965), aff'd, 17 N.Y.2d 500, 267 N.Y.S.2d 218 (1966).

(7) *November v. Time, Inc.*, 13 N.Y.2d 175, 178-79 (1963); *O'Connell v. The Press Pub. Co.*, 214 N.Y. 352, 358 (1915); *Morrison v. Smith*, 177 N.Y. 366, 368 (1904); *Scheinblum v. Long Island Daily Press Pub. Co.*, 37 Misc. 2d 1015, 239 N.Y.S.2d 435, 438 (Sup. Ct. 1962), aff'd, 239 N.Y.S.2d 531 (2d Dep't 1962).

(8) See *Tracy v. Newsday, Inc.*, 5 N.Y.2d at 137; *Reoux v. Glens Falls Post Co.*, 11 App. Div. 2d 919, 203 N.Y.S.2d 497, 498 (3d Dep't 1960).

Opinion, Bordoni vs. The New York Times

Bordoni, a director closely associated with Sindona, the largest shareholder in Franklin, is resigning from the Board -- a commonplace event in daily corporate life.

The article continues that Bordoni "played an important role in pushing Franklin into foreign-exchange trading in a major way"; that it was in foreign-exchange trading that "Franklin lost \$45.8 million during the first five months of 1974," which loss was part of a larger loss reported by Franklin for that period; that with Bordoni's resignation "Franklin's management in foreign-exchange trading has changed almost entirely." Then follows a statement that two officials who had been respectively head of the Bank's international operations and manager of its foreign-exchange trading desk, had resigned at about the time the foreign-exchange losses were announced. The following paragraphs refer to the dismissal of one of the Bank's foreign-exchange traders when the losses were first disclosed, and to the hiring of a new executive vice president "to reorganize its international currency trading operation," and the article continues that "[w]hether the Bordoni resignation was merely a part of this foreign-exchange housecleaning or part of a downgrading of Mr.

Sindona's influence at Franklin could not be determined."

Plaintiff places heavy store upon the foregoing as reflecting upon his ability and expertise in foreign exchange monetary matters. He emphasizes the statement that it was plaintiff "who played an important role in pushing Franklin into foreign-exchange trading in a major way." But this is to fragmentize and dissect the article rather than to read it as a whole and in context. Indeed, for a director of a corporation to urge, even in a strong way by force of his individual influence, a policy upon fellow directors does not reflect upon one's professional standing or competence. It is the legitimate exercise of a director's function, whether he is an inside or an outside director, as plaintiff describes himself. Foreign-exchange trading is lawful and may result, as in the instance of any other type of investment, in either profits or losses. The article itself suggests the Bank's continuation in foreign-exchange trading by the reference to the hiring of an executive vice president to reorganize the Bank's international currency trading operation.

Plaintiff's claim that the article attributes to him the Bank's substantial losses in foreign-exchange

trading is not borne out by a fair reading of the article
(9)

in context. While it is true that the bank's policy of engaging in foreign-exchange trading in a major way may be attributed to plaintiff, the article does not state or imply that he managed the Bank's foreign-exchange trading or played any role in the actual transactions which resulted in the losses. To the contrary, the references to the resignation of top officials of the Bank in charge of its foreign-exchange program and the dismissal of a foreign-exchange trader suggest it was they, if anyone, who were
(10)
responsible for the losses.

Finally, giving full sway to plaintiff's allegations in his complaint as to his background, prestige and

(9) As already observed, no innuendo is pleaded as to the claims alleging libel of plaintiff in his calling. Any such innuendo should have been pleaded. See *Kimmerle v. New York Evening Journal, Inc.*, 262 N.Y. 99, 101 (1933); *Morrison v. Smith*, 177 N.Y. 366, 369 (1904); *Cole Fischer Rogow, Inc. v. Carl Ally, Inc.*, 288 N.Y.S.2d at 562; *Reoux v. Glens Falls Post Co.*, 203 N.Y.S.2d at 498; *Lasky v. Kempton*, 285 App. Div. 1121, 140 N.Y.S.2d 526 (1st Dep't 1955); *Yonkers R.R. v. Herald Statesman, Inc.*, 248 App. Div. 633, 288 N.Y.S. 286 (2d Dep't 1936), *aff'd*, 273 N.Y. 541 (1937); *Kuster v. Press Pub. Co.*, 80 App. Div. 615, 80 N.Y.S. 1050, 1051 (1st Dep't 1903).

(10) For the applicable standard in determining whether innuendo is warranted, see note 16 infra and accompanying text.

standing, even if the article were read to defame plaintiff, the complaint must be dismissed under New York law.

Through the years New York has adhered to the "single-instance" rule first enunciated by its courts in 1811 in

(11)
Foot v. Brown. There it was held that charging an at-

torney with ignorance or unskillfulness in his handling of a particular case was not actionable in the absence of a
(12)

plea of special damage. The continuing vitality of the "single-instance" rule was reaffirmed by the New York

(13)
Court of Appeals in November v. Time, Inc., where the

court noted:

"[T]he rule still holds that language charging a professional man with ignorance or mistake on a single occasion only and not accusing him of general ignorance or lack of skill cannot be considered defamatory on its face and so is not actionable unless special damages are pleaded." (14)

The single-instance rule was applied recently

(11) 9 Johns. 64.

(12) See also Twigger v. Ossining Print. & Pub. Co., 161 App. Div. 710, 146 N.Y.S. 529 (2d Dep't 1914), appeal dismissed, 220 N.Y. 716 (1917) (charging dentist with unskillful work on a patient held not to state a claim in the absence of an allegation of special damage).

(13) 13 N.Y.2d 175, 244 N.Y.S.2d 309 (1963).

(14) Id. at 178.

in a case that parallels the instant one. There plaintiff, the publisher of an investment advisory service, charged that the defendants circulated in the financial community and among members of the investing public a monthly magazine which contained an article stating that plaintiff had recommended a stock which had declined in value -- that "the stock is running backward." The Appellate Division reversed an order of Special Term denying dismissal of the complaint and granted summary judgment to defendants. (15) The court noted that the article consisted "of the sardonic recital of what at worst might be considered a single instance of mistaken exercise of business judgment on plaintiff's part, without any imputation of fraud, deceit or malpractice," and held that the complaint did not state a cause of action in libel by any applicable standard.

Plaintiff contends that the "single-instance" rule is inapplicable upon a claim that the article charges him with more than one error with respect to the Bank's foreign-exchange trading -- that it charges "plaintiff's

(15) *Arnold Bernhard & Co. v. Finance Pub. Corp.*, 32 App. Div. 2d 516, 298 N.Y.S.2d 740 (1st Dep't), aff'd, 32 N.Y.2d 712, 307 N.Y.S.2d 220 (1969).

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policies and practices over a course of years involving a myriad of foreign currency transactions conducted on behalf of the Bank resulted in Franklin National Bank's suffering losses of \$45.8-million which in turn brought the Bank to the brink of financial disaster." However, this contention is without substance since it disregards the plain language of the article. As already noted, the article does not state or imply that Bordoni played any role in the actual foreign currency transactions which resulted in the losses. What it does state is that he played an important role in pushing Franklin into foreign-exchange trading. This was single advice or advocacy of a single policy of investment to management. The article does not directly or indirectly state that Bordoni thereafter engaged in or directed any of the transactions which effectuated the foreign-exchange trading policy.

The court concludes that the article does not defame the plaintiff in his calling, and even if it did call into question his business judgment in advocating the foreign-exchange policy, the "single-instance" rule would bar recovery. Accordingly the three claims here considered are dismissed.

There remains for consideration the claim wherein plaintiff relies upon an innuendo to support the charge that the article is libelous per se in charging that he participated in criminal acts. Under this claim it is first alleged that it is well known in the financial community that Franklin is a publicly owned company whose stock is traded on the New York Stock Exchange and is required to file periodic reports with the Exchange and various federal regulatory agencies. Then it is further alleged that by the article the defendants meant and were understood by persons reading it to mean that Bordoni had participated in criminal acts in violation of federal banking laws and regulations, including but not limited to disclosure requirements to which public and banking corporations such as Franklin and the Bank are subject.

Plaintiff perforce resorts to innuendo to support this claim, since the article makes no reference to criminal acts by him or for that matter by any other person named in the article. To sustain the innuendo, plaintiff underscores the following portion of the article:

"Sindona Has Loophole"

"In its release Thursday, Franklin noted that Mr. Sindona's obligation to purchase unsubscribed shares in the two proposed stock offerings was subject to a continuation of the bank's normal business and also to an absence of lawsuits.

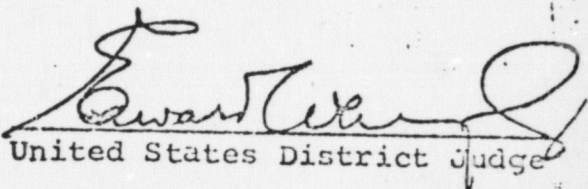
"This loophole, coupled with Mr. Bordoni's resignation, heightened the impression that Mr. Sindona might be withdrawing -- either by plan or from pressure from the regulatory authorities -- from Franklin."

Based primarily thereon, plaintiff contends that the article suggested that the "regulatory authorities" were investigating the activities centering about the foreign-exchange losses, which, so the argument runs, the article attributed to Bordoni, and that the authorities were exerting pressure on the Bank to sever its ties with both Bordoni and Sindona. The argument continues that "[b]y innuendo, therefore, the article stated that Bordoni may have been involved in some kind of fraudulent criminal activity in connection with such losses." This is stretching an innuendo beyond its outer limits.

It is for the court to decide whether the article is capable of the meaning ascribed to it, and if

it is not, then innuendo cannot make it libelous. (16) It
does violence to the ordinary and natural meaning of the
language quoted above, read in conjunction with the re-
mainder of the article, to say it is reasonably susceptible
to plaintiff's interpretation. The innuendo that plaintiff
participated in or committed criminal acts is unwarranted --
it is "strained, unreasonable and unjustified." (17) Accord-
ingly, the claim based upon innuendo is also dismissed.

Dated: New York, N. Y.
July 15, 1975


United States District Judge

(16) Tracy v. Newsday, Inc., 5 N.Y.2d at 136.

(17) Id. at 137.

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Opinion; Bordoni vs. The New York Times

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CARLO BORDONI

Plaintiff

-against-

WASHINGTON POST COMPANY, JACK EGAN
and B. C. BRADLEE

Defendants
----- X

US District Court
Filed
Aug. 7, 1975
SDNY
74 Civil 3169 (EW)

JUDGMENT

Defendants having moved the Court for an order to dismiss the complaint, and the said motion having come on to be heard before the Honorable Edward Weinfeld, United States District Judge, and the Court thereafter on July 15, 1975, having handed down its opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants WASHINGTON POST COMPANY, JACK EGAN and B. C. BRADLEE, have judgment against the plaintiff CARLO BORDONI, dismissing the complaint for failure to state a claim.

Dated: New York, N.Y.
August 7, 1975

S/ Raymond F. Burgardt
Clerk

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARLO BORDONI,

Plaintiff,

File Number: 74 Civil 3169
(E.W.)

-against-

WASHINGTON POST COMPANY, JACK
EGAN, and B.C. BRADLEE,

NOTICE OF APPEAL

Defendants.
-----X

S I R S:

PLEASE TAKE NOTICE that the plaintiff herein,
CARLO BORDONI, hereby appeals to the United States Court of
Appeals for the Second Circuit from the Order and Judgment
dismissing the Complaint entered herein on the 7th day of
August, 1975.

Dated: New York, NY
August 28, 1975

DI FALCO FIELD & LOMENZO, ESQS.

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